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NO. 82-1253

IN THE

Supreme Court of the United States

October Term, 1983

HERMAN SOLEM, *et al.*,
Petitioners,

v.

JOHN BARTLETT,
Respondent.

On Writ of Certiorari to
The United States Court of Appeals
for the Eighth Circuit

BRIEF OF THE COUNTIES OF DEWEY, ZIEBACH, AND CORSON, SOUTH DAKOTA, AND THE COUNTY OF SIOUX, NORTH DAKOTA AS AMICI CURIAE

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INTEREST OF AMICI CURIAE

The Counties of Dewey, Ziebach, Corson, and Sioux have a special interest in the outcome of this case. These four counties are included within the original boundaries of the two reservations affected by the 1908 Act of Congress at issue in this case, and each county contains a part of the area opened to settlement under the Act.[1] A finding that the opened areas remain within the boundaries of the two reservations will divest the counties of much of their civil, criminal, administrative, and regulatory jurisdiction within those areas. Because of this interest,

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1. This case centers on the status of the opened lands originally within the Cheyenne River Reservation in South Dakota. However, it necessarily affects as well the status of lands originally within the Standing Rock Reservation in North and South Dakota, which were also opened under the 1908 Act. Dewey and Ziebach Counties lie within the original boundaries of the Cheyenne River Reservation, and Corson and Sioux Counties lie within the original boundaries of the Standing Rock Reservation.

and the fact that the area involved represents a substantial portion of the territory of each county, the counties submit this brief as amici curiae.

STATEMENT OF THE CASE

The amici curiae adopt the Statement of the Case set forth in the Brief for the Petitioners. In addition, the counties present the following background to the issue presented by this case.

The original Cheyenne River Reservation was established in 1889 and consisted of some 2.9 million acres of land in western South Dakota. See, e.g., United States ex rel. Condon v. Erickson, 478 F.2d 684, 685 (8th Cir. 1973). In 1908, following consultations between the federal government and the Cheyenne River Sioux Tribe, Congress enacted the statute in question, which directed the Secretary of the Interior to "sell and dispose of" the unallotted lands in portions of both the Cheyenne River Reservation and the

adjacent Standing Rock Reservation. Act of May 29, 1908, 15 Stat. 460 (Appendix of Petitioner (hereinafter "App. Pet.") A1-A16). Pursuant to the provisions of the Act, an area consisting of the western portions of the two reservations and an area along both sides of their mutual east-west boundary -- amounting to a little over half of the original acreage of the reservations -- was opened to settlement in 1910. See H.R. Rep. No. 1539, 60th Cong., 1st Sess. at 3 (1908) (App. Pet. A27); Presidential Proclamation of August 19, 1909, 36 Stat. 2500; 40 Interior Dec. 56 (1910).

It is important to note that this jurisdictional dispute essentially involves the opened and unrestored lands within the original reservation boundaries. There is no dispute over the fact that the unopened portion of the reservation, together with the substantial land area later restored to

reservation status,[2] presently exist as an Indian reservation. There is also no dispute that individual Indian allotments held in trust by the federal government are "Indian country" by virtue of 18 U.S.C. § 1151(c). Nor do the counties question the continued provision of federal services to Indians living within the area. Instead, what is essentially at issue in this case is state and local jurisdiction over non-Indian lands.

The question presented by this case has been the subject of several court decisions. Since the opening of the reservation, the Supreme Court of South Dakota has uniformly held that the opened areas were disestablished

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2. Following the passage of the Indian Reorganization Act in 1934, a substantial amount of land in the opened area which had not been sold was restored to tribal ownership and reservation status by the Secretary of the Interior under Sections 3 and 7 of the Act, 25 U.S.C. §§ 463 and 467. 6 Fed. Reg. 3300 (1941); 14 Fed. Reg. 471 (1949); 17 Fed. Reg. 1065 (1952); 22 Fed. Reg. 3693 (1957); 30 Fed. Reg. 15588 (1965); 32 Fed. Reg. 14276 (1967).

and ceased to be part of the reservations. See State v. Janis, 317 N.W.2d 133 (S.D. 1982); Stankey v. Waddell, 265 N.W.2d 117 (S.D. 1977); State v. Barnes, 81 S.D. 511, 137 N.W.2d 682 (1965); Lafferty ex rel. State v. Jameson, 80 S.D. 411, 125 N.W.2d 171 (1963); State v. Sauter, 48 S.D. 409, 125 N.W. 25 (1925). The federal courts have not been so consistent. The District Court for South Dakota determined in 1911 and in 1978 that the 1908 Act had the effect of disestablishment. United States v. LaPlant, 200 F. 92 (D.S.D. 1911); United States v. A Juvenile, 453 F. Supp. 1171 (D.S.D. 1978), rev'd sub nom. United States v. Dupris, 612 F.2d 319 (8th Cir. 1979), vacated mem., 446 U.S. 980 (1980). However, other decisions of the Eighth Circuit and of the District Court have held to the contrary. See Bartlett v. Solem, 691 F.2d 420 (8th Cir. 1982); United States v. Dupris, 612 F.2d 319 (8th Cir. 1979), vacated mem., 446 U.S. 980 (1980); United States ex rel. Condon v. Erickson, 478 F.2d

684 (8th Cir. 1973), aff'g 344 F. Supp. 777 (D.S.D. 1972).

SUMMARY OF ARGUMENT

Under the principles established by this Court in Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977), and DeCoteau v. District County Court, 420 U.S. 425 (1975), there can be no question that the 1908 Cheyenne River Act disestablished the area opened to settlement under the Act. The face of the Act contains plain indications of congressional intent to disestablish, and is indistinguishable from the nearly identical statutes of 1907 and 1910 construed in Rosebud. The legislative history, which includes committee reports and records of negotiations with the Indians, further demonstrates the intent apparent on the face of the Act. This intent is also confirmed by circumstances surrounding the enactment and implementation of the Act, and by the subsequent treatment

of the opened areas by Congress, the executive branch, and the courts.

ARGUMENT

I. THIS COURT HAS ESTABLISHED CLEAR PRINCIPLES FOR DETERMINING QUESTIONS OF RESERVATION DISESTABLISHMENT BY ACTS OF CONGRESS.

In determining the effect of congressional enactments on the boundaries of Indian reservations, the intent of Congress controls. Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 586 (1977); DeCoteau v. District County Court, 420 U.S. 424, 442, 444 (1975). The decisions in Rosebud and DeCoteau outline several factors to be examined when determining the effect of statutes, like the 1908 Act, which opened surplus Indian lands to non-Indian settlement: the face of the Act at issue, its legislative history and surrounding circumstances, and its subsequent treatment by courts and government officials. Rosebud at 587, 603; DeCoteau at 442, 444. As is detailed below, a full consideration of all

these factors with respect to the 1908 Cheyenne River Act leads to the unavoidable conclusion that Congress intended to alter the boundaries of the Cheyenne River and Standing Rock Reservations by disestablishing the areas opened to settlement under the Act.

II. THE FACE OF THE 1908 ACT CLEARLY REFLECTS AN INTENT TO DISESTABLISH.

A. The Cheyenne River Act and the Rosebud Acts

What is perhaps most striking about the 1908 Cheyenne River Act is its strong resemblance to the 1907 and 1910 Acts which opened portions of the nearby Rosebud Reservation, and which were construed by this Court in Rosebud Sioux Tribe v. Kneip to have the effect of disestablishment. A side-by-side comparison of the pertinent provisions of the three statutes reveals only trivial differences. See Amici App. (attached hereto) A1-A19. Furthermore, there is nothing in the history or language of the 1908 Act to suggest

that it was to have an effect any different from the Rosebud Acts.[3] Since no logical distinction can be drawn between the Cheyenne River and Rosebud statutes, it must be presumed, in the absence of any contrary indication, that they shared an identity of purpose. Therefore, the similarity in language and time between the Cheyenne River Act and the Rosebud Acts renders Rosebud controlling. See also United States ex rel. Cook v. Parkinson, 525 F.2d 120, 125 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977) (Rosebud controlling as to effect of virtually identical 1910 Pine Ridge Act).

B. "Sell and Dispose"

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3. In Rosebud, the Cheyenne River Sioux Tribe, among others, submitted an amicus brief which equated the 1908 Act and other surplus lands acts with the Rosebud Acts and argued that if the lower court's opinion in Rosebud were upheld -- which it was -- jurisdiction over the area opened by the 1908 Act would lie with the State. Brief Amici Curiae of the Association on American Indian Affairs, Inc., et al. at 2-4, Rosebud Sioux Tribe

In the operative language of the 1908 Act, contained in Section 1, Congress "authorized and directed" the Secretary of the Interior "to sell and dispose of" certain described portions of the Cheyenne River and Standing Rock Reservations, except those tracts which had been allotted to individual Indians. 35 Stat. 460, App. Pet. A1. Although the Court has stated that "[t]he mere fact that a reservation has been opened to settlement does not necessarily mean that the opened area has lost its reservation status," it has also found statutes with identical language to have the effect of disestablishment. Rosebud, 430 U.S. at 586-87, 608-09, 612-13 (emphasis added).

Since the focus of the present inquiry is congressional intent, the 1908 Act "must be read in light of the common notions of the day and the assumptions of those who drafted

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(cont.)
v. Kneip, 430 U.S. 584 (1977).

them." Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 206. See generally Rosebud, 430 U.S. at 594-602. At the time the 1908 Act was passed by Congress, an Indian reservation was understood to be "a certain defined tract appropriated to certain purposes," that is, the use and occupancy of a particular group of Indians. Minnesota v. Hitchcock, 185 U.S. 373, 390 (1902). Accord R. Strickland, et al., Felix S. Cohen's Handbook of Federal Indian Law 34-35 (1982). Thus, once Indian title to a reservation area was extinguished, the area was no longer "reserved" for the specific purpose of providing a home for Indians and by definition ceased to be an Indian reservation. See Clairmont v. United States, 225 U.S. 551, 560 (1912) (cession of railroad right-of-way); Hollister v. United States, 145 F. 773, 778 (8th Cir. 1906) (surplus lands acts in South Dakota). The language in the 1908 Act providing for the sale and disposition of certain portions of

the Cheyenne River and Standing Rock Reservations is therefore an indication that Congress intended to disestablish those areas.

C. "Reservations thus Diminished"

More explicit than Section 1 is Section 2 of the Act, which provided that Indians who had selected allotments in the areas to be opened under Section 1 were to be allowed to relinquish these allotments in exchange for an allotment "anywhere within the respective reservations thus diminished." 35 Stat. 461, App. Pet. A5 (emphasis added). The use of the phrase "thus diminished" is an unmistakable and unequivocal indication that Congress intended to diminish the size of the reservation by the sale and disposition of lands under Section 1.[4] See Rosebud Sioux

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4. In Erickson, the Court of Appeals suggested that this phrase did not refer to the diminution of the size of the reservation, but to a reduction in the acreage owned by Indians. 478 F.2d at 687. This interpretation ignores not only the history of the Act but the logical sense of the phrase -- the

Tribe v. Kneip, 521 F.2d 87, 111-12 (8th Cir. 1975), aff'd, 430 U.S. 584 (1977). In Rosebud, this Court found a similar provision in the 1910 Rosebud Act to be "a strong indication" of an intent to disestablish. 430 U.S. at 613-14. See Amici App. A5.

D. "Public Domain"

Another explicit expression of disestablishment intent appears in Section 9 of the 1908 Act, which, among other things, provided that Indians residing in certain townships in the opened area retained a right to take timber in those townships, but for "only as long as the lands remained part of the public domain". 35 Stat. 464 (App. Pet. A16) (emphasis added). Clearly, the Act contemplated that the lands to be opened were to be restored to the public domain, and would remain so until sold to settlers. The

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(cont.)
language in question speaks of diminished "reservations", not a diminished Indian land base.

decisions of this Court have established beyond question that restoration to the public domain is wholly inconsistent with continued reservation existence and is synonymous with disestablishment. Rosebud, 430 U.S. at 589 n.5; DeCoteau, 420 U.S. at 426-27, 446, 448-9; Seymour v. Superintendent, 368 U.S. 351, 358 (1962). The reference to "public domain" in the 1908 Act is thus an unequivocal indication of an intent to disestablish. Stankey v. Waddell, 256 N.W.2d 117, 126-27 (S.D. 1977).

E. School Lands

Further confirmation of disestablishment intent is found in the "school lands" provisions of Sections 1 and 7, which specified that the sixteenth and thirty-sixth sections of each township were not to be subject to homestead entry but instead were to be granted to the States for school purposes. 35 Stat. 461, 463, App. Pet. A12-A13. The significance of such a provision has been fully explained

by this Court in Rosebud with regard to virtually identical provisions in the three Rosebud Acts. See Amici App. A3, A15-A16. Compare Rosebud, 430 U.S. at 599-601, 608 n.35 with United States v. A Juvenile, 453 F. Supp. 1171, 1192 (D.S.D. 1978), rev'd sub nom. United States v. Dupris, 612 F.2d 319 (8th Cir. 1979), vacated mem., 446 U.S. 980 (1980). The "natural construction" of this provision is, as in Rosebud, to read a congressional intent to disestablish the opened lands, thereby making the sections available for disposition to the states as school sections under the Enabling Act. 430 U.S. at 601.

F. The Liquor Prohibition

Still another pertinent indication of the intent of the 1908 Act is a provision in Section 8, added by amendment in 1910, which prohibited the introduction of intoxicating liquors into the opened area for a period of twenty-five years. Act of February 17, 1910, 36 Stat. 196. This provision is identical to a

provision in the 1910 Rosebud Act which the Court interpreted to "reflect strongly" an intent to disestablish. 430 U.S. at 613-14. See Amici App. A17. Compare Rosebud at 613-14 with A Juvenile, 453 F. Supp. at 1197-98, and Stankey, 256 N.W.2d at 126.

III. THE LEGISLATIVE HISTORY OF THE 1908 ACT AND THE CIRCUMSTANCES SURROUNDING ITS ENACTMENT CONFIRM THAT ITS PURPOSE WAS DISESTABLISHMENT.

A. The Federal Policy of the Period

The 1908 Act cannot be interpreted in a historical vacuum. In order to better understand the purposes of legislation, it is useful to view it against the backdrop of the governmental policies prevailing at the time of enactment, which form part of the Act's surrounding circumstances.

During this period, the federal government adopted a policy directed toward the eventual assimilation of the Indian population into the mainstream of non-Indian society. See Montana v. United States, 450 U.S. 544, 559 n.9 (1981); Act of February 8,

1887, 24 Stat. 388 (General Allotment Act); Act of March 2, 1889, 25 Stat. 888 (Sioux Allotment Act). One of the more important aspects of this policy was the reduction in the size of existing Indian reservations, which were viewed as obstacles both to the advancement of the Indians and the settlement and agricultural development of the West by non-Indians. See, e.g., Montana v. United States, 450 U.S. at 559 n.9; Draper v. United States, 164 U.S. 240, 246 (1896); United States v. Dupris, 612 F.2d at 326-28 (McMillian, J., dissenting); Rosebud Sioux Tribe v. Kneip, 521 F.2d at 102; Hollister v. United States, 145 F. 773, 777 (8th Cir. 1906).

The usual means employed by Congress to reduce the size of Indian reservations was to dispose of the reservation lands considered surplus to the needs of the Indians by selling those lands to non-Indian settlers. In the 1880's and 1890's, such surplus land acts were ordinarily in the form of agreements with the

Indians, which often provided for the cession of lands to the United States for a certain sum of money. See, e.g., DeCoteau v. District County Court, 420 U.S. 425 (1975). In the early 1900's, however, Congress adopted a "new policy," opening lands by unilateral acts of Congress and providing compensation for these lands only as payments were received from actual settlers. Rosebud Sioux Tribe v. Kneip, 430 U.S. at 592.

The application of this Indian surplus lands policy is clearly reflected in the history of the non-Indian settlement of South Dakota during the period. In 1889, by way of agreement with the Sioux Indians, Congress provided for the restoration to the public domain of about half of the original Great Sioux Reservation, and for the creation of six new separate reservations out of the remainder. Act of March 2, 1889, 25 Stat. 888. In 1891 and 1894, cession agreements were ratified which opened all the unallotted

lands in the Lake Traverse and Yankton Reservations. Act of March 3, 1891, 26 Stat. 1035; Act of August 15, 1894, 28 Stat. 286. A cession agreement was later entered into with the Rosebud Sioux, but the terms of this agreement were unilaterally altered by Congress. Act of April 23, 1904, 33 Stat. 254. Over the next ten years, Congress unilaterally enacted a series of substantially identical surplus lands acts, providing for the opening of portions of other reservations in South Dakota. Act of April 21, 1906, 34 Stat. 124 (Lower Brule); Act of March 2, 1907, 34 Stat. 1230 (Rosebud); Act of May 29, 1908, 35 Stat. 460 (Cheyenne River and Standing Rock); Act of May 27, 1910, 36 Stat. 440 (Pine Ridge); Act of May 30, 1910, 36 Stat. 448 (Rosebud); Act of February 14, 1913, 37 Stat. 675 (Standing Rock). Most of the above statutes are currently understood to have had disestablishment effect. See Rosebud Sioux Tribe v. Kneip, 430 U.S. at 588 (1904, 1907,

and 1910 Rosebud Acts); DeCoteau v. District County Court, 420 U.S. 425 (1975) (1891 Lake Traverse Act); United States ex rel. Cook v. Parkinson, 525 F.2d 120 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977) (1910 Pine Ridge Act); Lower Brule Sioux Tribe v. South Dakota, 540 F. Supp. 276, 281 (D.S.D. 1982), rev'd on other grounds, No. 82-1635 (8th Cir., June 27, 1983) (1906 Lower Brule Act); State v. Williamson, 87 S.D. 512, 211 N.W.2d 182 (1973) (1893 Yankton Act). See also Perrin v. United States, 232 U.S. 478, 480 (1914). (1894 Yankton Act)

B. The Legislative History of the 1908 Act

1. Negotiations with the Indians

In 1907, the "familiar forces" described in Rosebud and DeCoteau began to affect the Cheyenne River and Standing Rock Reservations, prompting demands to open up the surplus lands of the reservations to non-Indian settlement. United States v. A Juvenile, 453 F. Supp. at 1176-77, 1197. See generally Rosebud, 430

U.S. at 590, 606, 609; DeCoteau, 420 U.S. at 431-32. In December of 1907, Senator Gamble of South Dakota, who was also the Senate sponsor of the Rosebud Acts and the 1910 Pine Ridge Act, introduced a bill to open parts of the Cheyenne River and Standing Rock Reservations. S. 1385, 60th Cong., 1st Sess. (1907). See also H.R. 17825, H.R. 17884, 60th Cong., 1st Sess. (1908). The Commissioner of Indian Affairs then directed Indian Inspector James McLaughlin to proceed to the two reservations to explain the proposal to the Indians and to solicit their views. A Juvenile at 1177-78. Scarcely a year before, Inspector McLaughlin had conducted councils with the Rosebud Indians regarding the legislation which became the 1907 Rosebud Act,[5] and the

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5. Inspector McLaughlin was also sent by the federal government to conduct the discussions with the Indians concerning the 1904 and 1910 Rosebud Acts, as well as the 1910 Pine Ridge Act. Rosebud, 430 U.S. at 590-94, 606-07, 610-11; United States ex rel. Cook v. Parkinson, 396 F. Supp. 473, 480-88 (D.S.D.), aff'd, 525

Commissioner advised McLaughlin to follow his instructions regarding Rosebud "so far as applicable." A Juvenile, 453 F. Supp. at 1178.

Inspector McLaughlin journeyed to the two reservations in March, 1908, holding councils first with the Indians in the Standing Rock Reservation. H.R. Rep. No. 1539, 60th Cong., 1st Sess. at 5 (1908); S. Rep. No. 439, 60th Cong., 1st Sess. pt 2 at 2 (1908); App. Pet. A37. The transcripts of these councils very clearly indicate that both Inspector McLaughlin and the Indians understood that the proposed legislation would disestablish a portion of the reservation. This understanding is reflected in numerous references to new boundaries, cession and relinquishment of the opened portion, and the creation of a "diminished reservation." App. Pet. A58-A59, A62 (remarks of Inspector McLaughlin), A68 (remarks of Arthur Tibbets),

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(cont.)
F.2d 120 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977).

A76 (remarks of Antoine Derockbrain), A80 (remarks of John Grass), A84, A85, A87-A90, A93, A95-A100 (remarks of Inspector McLaughlin), A102-104 (remarks of Thomas Frosted), A106, A110-A112 (remarks of Inspector McLaughlin), A113-A115 (remarks of Siaka), A118 (remarks of High Bear), A120-A121 (remarks of Inspector McLaughlin).

One representative passage is the following statement of McLaughlin:

> Now, my friends, as to the lines which I have marked on this map in blue pencil for you to relinquish, if every Indian on this reservation were to receive an allotment within the diminished reservation it would still leave you about 500,000 acres of surplus land, and as there are a great many of your people allotted in the tract that will be ceded, you will therefore have a great many acres of surplus land within your diminished reservation.
>
> The Marshall bill gives you permission to select any lands you may wish in the portion to be ceded, or those who are allotted there may relinquish if they so desire and come within the diminished reservation.

App. Pet. A87-A88

The transcript of the councils held by McLaughlin and the Indians at the Cheyenne River Reservation, like those at Standing Rock, contain repeated references which clearly indicate that these discussions were also conducted with the understanding that the legislative proposals would have the effect of disestablishment. App. Pet. A131-A132, A134, A135, A143, A144 (remarks of Inspector McLaughlin), A152 (remarks of Allen Fielder). For example, McLaughlin stated at one point:

> I was for many years in favor of leaving the boundaries of Indian reservations undisturbed; but results of the system have caused me to change my mind relative to same, and I now believe, even if such were possible, that large reservations for Indians, much of which is not occupied by them, is not for the best interests of the Indian occupants.

App. Pet. A134.

This understanding was carried forward in Inspector McLaughlin's report to the Secretary of the Interior, which, like the council transcripts, was adopted as part of

the House and Senate Reports of the legislation. In his report, McLaughlin spoke several times of the "cession" or relinquishment of lands and the proposed boundaries of the "diminished" reservations. App. Pet. A38-A40, A44-A47, A48-A50. In particular, McLaughlin stated that he drew lines on a map of South Dakota so that the Standing Rock Indians "might fully understand the boundaries of the proposed diminished reservation." App. Pet. A39.

It is plain from the above materials that it was the understanding of the Indians and of Inspector McLaughlin that the proposed opening, whatever its scope, would result in disestablishment of the area affected.[6] Even

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6. There was no formal written agreement entered into by McLaughlin and the Indians. Nevertheless, McLaughlin was satisfied that the Indians at each reservation had generally agreed to the proposal. App. Pet. A38, A41, A46, A49, A51; S. Rep. No. 439, pt. 2 at 2-4. This Court has made it clear that Congress knew at the time that it could unilaterally terminate reservation

more importantly, it is equally apparent that this understanding was shared by the House and Senate Committees and by Congress as a whole. The report of Inspector McLaughlin and the transcripts of the councils with the Indians were incorporated by the Committees as part of their printed report accompanying the legislation as transmitted by the Committees to the floor of their respective houses, without qualification or any other indication that the perception of the legislation expressed in these documents was not also the perception of the Committees. Therefore, it can only be concluded that the Committee was

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(cont.)
status and that Indian consent is therefore not necessarily relevant to a question of disestablishment. Rosebud, 430 U.S. at 587-88, 598 & n.20. The circumstances of the 1908 Act do not differ from those of the 1910 Rosebud Act, in which Inspector McLaughlin "did not seek to negotiate an agreement with the Indians, but reported back to the Secretary of the Interior the 'practically unanimous' concurrence of the Indians" in the opening. 430 U.S at 610.

in full agreement with the understanding when it considered and approved the legislation and presented it for consideration by the whole houses of Congress.

2. Congressional Consideration

On April 1, 1908, the Senate Committee on Indian Affairs reported S. 1385, with some amendments. S. Rep. No. 439, 60th Cong., 1st Sess. (1908). In particular, the Committee adopted Inspector McLaughlin's recommendations as to the tract to be opened to settlement, and stated that the bill had been submitted to the Indians and that it had been amended to conform to the understanding reached with each group of Indians. Id. at 4; App. Pet. at A27-A29. In addition to Inspector McLaughlin's report, the portion of the Senate Report prepared by the Committee refers to the "reduced" and "diminished" reservations, and thus also indicates that the Committee understood that the Cheyenne River bill would disestablish the opened area. Id.

at 4, 5 (App. Pet. A28-A29). The bill passed the Senate without debate, following the proposal and adoption of the Committee amendments and a few amendments offered by Senator Gamble. 42 Cong. Rec. 4753-55 (Amici App. B1-B12).

Following passage by the Senate, S. 1385 was reported, with some amendments, by the House Committee on Indian Affairs. H.R. Rep. No. 1539, 60th Cong., 1st Sess. (1908); 42 Cong. Rec. 5455. It is particularly noteworthy that the House Committee expressly adopted, as part of its Report, all of the discussion of the bill in the Senate Report and the entire report of Inspector McLaughlin. App. Pet. A27. It is thus evident that the House Committee shared the perception of the bill held by the Senate, Inspector McLaughlin, and the Indians, and that the bill was transmitted to the House floor with the baseline purpose of disestablishment. Furthermore, the House Report demonstrates that Congress included the

school lands provision of the Act for the same reason that it included nearly identical provision in the Rosebud Acts. App. Pet. A26. See Rosebud, 430 U.S. at 599-600.

Although the debate on the bill in the House centered on other matters, there are references in the debate confirming that the intent of Congress was to reduce the size of the reservations. See, e.g., 42 Cong. Rec. 7005-7006 (1908) (Amici App. B16 (remarks of Rep. Sherman - school lands), B21 (remarks of Rep. Hall - school lands), B23 (remarks of Rep. Hall - Cheyenne River opening likened to Rosebud opening), B25 (remarks of Rep. Carter -- "what is now the reservation")).

While there was little debate as to the effect of the 1908 Act, this fact is hardly surprising in light of the historical context of the legislation. As noted above, Congress had passed three similar surplus lands acts with respect to other reservations in South Dakota in the years immediately preceding the

consideration of the Cheyenne River legislation, and the effect of such statutes must therefore have been well known. See Act of April 23, 1904, 33 Stat. 254 (Rosebud); Act of April 21, 1906, 34 Stat. 124 (Lower Brule); Act of March 2, 1907, 34 Stat. 1230 (Rosebud). In determining the effect of the 1907 and 1910 Rosebud Acts, this Court examined the statutes in the context of the 1904 Rosebud Act and found nothing in the language or history of the later acts to indicate an intent different from that of the 1904 Act. See Rosebud, 430 U.S. at 606 n.30, 609, 614-15. In this case, the 1908 Act should likewise be examined against the backdrop of other similar statutes opening reservation lands in South Dakota, which were, for the most part, sponsored by the same members of Congress and comprise part of the same legislative program. See United States v. Dupris, 612 F.2d at 326-27 (McMillian, J., dissenting); United States ex rel. Cook v. Parkinson, 525 F.2d at 123. In

this setting, the lack of debate on the 1908 Act must be viewed as an indication that its purpose was no different from that of the other acts.[7] It is inconceivable that Congress, without any discussion, would enact several virtually identical statutes over the same period of time and intend them to have radically variant results.

3. The 1910 Amendment to the 1908 Act.

The history of the 1908 Act following its passage also supports the conclusion that the Act had disestablishment effect. In 1908 and 1909, before the lands were opened, proposals were made to raise the price to be paid the Indians for the school lands provided to the States. S. 7914, 60th Cong., 2d Sess. (1908); S. Rep. No. 764, 60th Cong., 2d Sess. (1909); S. 3286, 61st Cong., 2d Sess. (1909); H.R.

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7. Congressional consideration of the 1907 and 1910 Rosebud Acts was similarly characterized by an absence of debate concerning the jurisdictional effect of the Acts. See Appendix at 877-94, 1052-1233, Rosebud Sioux Tribe v. Kneip.

12438, 61st Cong., 2d Sess. (1909); H.R. Rep. No. 48, 61st Cong., 2d Sess. (1910); S. Rep. No. 165, 61st Cong., 2d Sess. (1910). This amendatory legislation resulted in the Act of February 17, 1910, 36 Stat. 196. The history of this legislation again reaffirms to connection between the school lands provision and the enabling act, and bolsters the conclusion that the 1908 Act had disestablishment effect. See 43 Cong. Rec. 1667 (1909) (remarks of Sen. Gamble); 45 Cong. Rec. 504, 738, 739 (1910) (remarks of Sen. Gamble) (Amici App. C3, C7-C8, C10, C12-C13). In particular, Senator Gamble stated:

> By the [1908] Act itself. . . the lands become a part of the public domain, and the original grant to the States at that time becomes operative.

45 Cong. Rec. 739 (Amici App. C13) (emphasis added).

Another feature of the 1910 amendment was the amendment prohibiting the introduction of liquor into the opened area for a period of

twenty-five years following the opening. 36 Stat. 197. It is apparent from the history of this portion of the amendment that the 1908 Act was understood to terminate the reservation status of the opened area, and that it was enacted for the same reasons as was the virtually identical provision in the 1910 Rosebud Act.[8] See Amici App. A17. Compare Rosebud Sioux Tribe v. Kneip, 430 U.S. at 613, with 45 Cong. Rec. 1769-70 (1910) (remarks of Reps. Burke and stafford) (Amici App. C53-

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8. The legislative material cited by the United States in Dupris, which the Court of Appeals regarded as support for its conclusion that the liquor provision was of little importance, does not directly relate to the amendment in question, but is instead a report of a separate bill aimed at the opening of the portions of the Cheyenne River and Standing Rock Reservations left unopened by the 1908 Act. United States v. Dupris, 612 F.2d at 322. See S. Rep. No. 518, 61st Cong., 2d Sess. (1910). The fact that the report referred to the application of a liquor amendment throughout all of the original reservation - and understandably so, since all of the reservation was to be opened - apparently led to some confusion on the part of the court in Dupris.

C57); H.R. Doc. No. 711, 61st Cong., 2d Sess. at 1 (1910). First of all it is clear from the legislative debate that the liquor prohibition, as in Rosebud, was deemed to be necessary because the opened areas would no longer be subject to federal jurisdiction and the federal proscription against the introduction of liquor into Indian country.[9] Moreover, Burke likened the prohibition amendment to a similar provision in a cession statute extending federal liquor laws to lands formerly part of the Yankton Reservation. See Act of August 15, 1894, 28 Stat. 286; Perrin v. United States, 232 U.S. 478, 480 (1914).

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9. A letter to Congress from the Secretary of the Interior, accompanying a draft of the Cheyenne River amendment, specifically relied on the decision in Dick v. United States, 208 U.S. 340 (1908), as a basis for the Cheyenne River Liquor prohibition. H.R. Doc. No. 711, 61st Cong., 2d Sess. at 1 (1910). As explained in Rosebud, Dick involved a similar prohibition in a cession statute which unquestionably had the effect of

4. The Presidential Proclamation

On August 19, 1909, President Taft issued a proclamation, as required by the 1908 Act, opening the affected lands to settlement. Proclamation of August 19, 1909, 36 Stat. 2500. There is nothing in this Proclamation to suggest that the purpose of the 1908 Act was not disestablishment. In fact, the Proclamation is indistinguishable from the 1908 and 1911 Proclamations which implemented the 1907 and 1910 Rosebud Acts. See Proclamation of August 24, 1908, 35 Stat. 2203 (reproduced in Appendix for Respondents, Rosebud Sioux Tribe v. Kneip, at 57). Thus, there is no reason to believe that the President's understanding of the intended effect of the 1908 Cheyenne River Act was any

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(cont.)
disestablishment. 430 U.S. at 614 n.47.

different from that of the Rosebud Acts.[10]

IV. THE SUBSEQUENT HISTORY OF THE AREAS OPENED UNDER THE 1908 ACT CONFIRMS THAT THE ACT HAD THE EFFECT OF DISESTABLISHMENT

A. Subsequent Congressional Treatment

The treatment of the Cheyenne River and Standing Rock areas in the years following the passage of the 1908 Act demonstrates that Congress itself understood that the Act had the purpose of disestablishment. This perception is illustrated in a series of statutes extending the time in which homestead settlers in the opened area were required to make payments for purchase of the lands. For example, in a number of the extension statutes and their legislative histories, the opened

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10. Given this similarity between the Cheyenne River and Rosebud Proclamations, there would appear to be little validity to respondent's argument that the differences between the 1909 Cheyenne River Proclamation and the first Rosebud Proclamation of 1904 constitute grounds for distinction between the Cheyenne River and Rosebud Acts. See Brief of Respondent in Opposition to Petition at 11-12.

lands are described as "former" reservation lands, "formerly a part of" the reservation, or "ceded" lands. See Act of April 13, 1912, 37 Stat. 84, Act of April 25, 1922, 42 Stat. 499; Act of March 3, 1925, 43 Stat. 1184; Act of March 31, 1928, 45 Stat. 400; Act of February 14, 1931, 46 Stat. 1107; S. Rep. No. 209, 62d Cong., 2d Sess. at 1-2 (1912); H.R. Rep. No. 315, 62d Cong., 2d Sess. at 2 (1912); 48 Cong. Rec. 2335 (1912); S. Rep. No. 727, 66th Cong., 3d Sess. at 2 (1921); H.R. Rep. No. 694, 67th Cong., 2d Sess. at 1, 3 (1922); S. Rep. No. 554, 67th Cong., 2d Sess. at 1, 3 (1922); H.R. Rep. No. 1117, 68th Cong., 2d Sess. at 1, 2 (1925); S. Rep. No. 1115, 68th Cong., 2d Sess. at 1, 2 (1925); H.R. Rep. No. 900, 70th Cong., 1st Sess. at 1, 2 (1928). Other extensions were included with extensions for homesteads on other opened lands, such as the Rosebud areas, which had been disestablished, and it is apparent that the various surplus lands acts involved were regarded as being generally

the same. See Act of March 26, 1910, 36 Stat. 265; Act of May 27, 1914, 38 Stat. 383; S. Rep. No. 406, 61st Cong., 2d Sess. at 2 (1910); 45 Cong. Rec. 2851-53 (1910); H.R. Rep. No. 546, 63d Cong., 2d Sess. at 1 (1914); 51 Cong. Rec. 8790-92 (1914).

Confirmation of the congressional intent to disestablish in the 1908 Act is found not only in the extension statutes but in other subsequent legislative materials which refer to the "diminished" or "reduced" reservations. See S. Rep. No. 819, 60th Cong., 2d Sess. at 1, 2 (1909); H.R. Rep. No. 2099, 60th Cong., 2d Sess. at 1, 2 (1909); S. Rep. No. 100, 61st Cong., 2d Sess. at 1, 2 (1910); S. Rep. No. 591, 61st Cong., 2d Sess. at 4 (1910); S. Rep. No. 518, 61st Cong., 2d Sess. at 4 (1910); S. Rep. No. 216, 62d Cong., 2d Sess. at 3 (1912); H.R. Rep. No. 637, 62 Cong., 2d Sess. at 7, 9 (1912). See also 45 Cong. Rec. 5799, 5808 (1910) (1908 Act "similar" and "identical" to 1907 Rosebud Act). For example, in 1913,

Congress provided for the opening of the remainder of the Standing Rock Reservation left unopened by the 1908 Act. Act of February 14, 1913, 37 Stat. 675.[11] The legislative history to this statute shows that the acreage left unopened by the 1908 Act was thought by Congress to constitute "the entire reservation" and "all of the remaining lands on this reservation." S. Rep. No. 217, 62d Cong., 2d Sess. at 1 (1912); 48 Cong. Rec. 1475 (1912) (Remarks of Senator Gamble). The materials also contain references to "the diminished reservation" and the "former boundaries." H.R. Rep. No. 637, supra, at 7, 9.

These subsequent legislative references demonstrate that Congress understood that the

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11. The effect of this statute is not at issue in this case. However, it is the position of the amici counties that the 1913 Act also had the effect of disestablishment, and that the decision in United States v. Long Elk, 565 F.2d 1032 (8th Cir. 1977), which the court below has used for support of its decisions regarding the 1908 Act, is incorrect.

1908 Act disestablished the portions of the two reservations opened to settlement. Thus, they stand as persuasive evidence as to the perceived intent of the 1908 Act. Moreover, as is explained below, the understanding of Congress was shared by the other branches of government.

B. Subsequent Jurisdictional History

It is well established that the subsequent jurisdictional history of an area ought to be considered in determining whether the reservation status of that area has been terminated. See, e.g., Rosebud Sioux Tribe v. Kneip, 430 U.S. at 603-05; DeCoteau v. District County Court, 420 U.S. at 442. In this case, the jurisdictional history of the opened areas establishes a long-standing pattern of understanding on the part of the United States, state and local governments, and the Courts, that the area was disestablished and that jurisdiction over non-Indian lands in the area was consequently

transferred to the States and their subdivisions.

1. The Assumption of State Jurisdiction

As the District Court noted in United States v. A Juvenile, 453 F. Supp. at 1199, the evidence indicates that the State assumed civil and criminal jurisdiction over the opened portion of the original Cheyenne River Reservation shortly after the opening in 1910 and continued to exercise jurisdiction without interruption in that area for over sixty years, until the District Court decision in United States ex rel. Condon v. Erickson, 344 F. Supp. 777 (1972).[12] See also Transcript of Hearing 11-17, United States v. A Juvenile (January 9, 1978) (included in designated record for

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12. Although the exercise of state jurisdiction resumed after the 1977 decision in Stankey v. Waddell, 256 N.W.2d 117 (S.D.), resulting in prosecutions such as that underlying the instant case, state prosecutions were later largely suspended as the jurisdictional situation remained in doubt.

the Court of Appeals in the instant case); United States v. Dupris, 612 F.2d 319, 338-39 (McMillian, J., dissenting); State v. Barnes, 81 S.D. 511, 137 N.W.2d 683 (1965); Lafferty ex rel. State v. Jameson, 80 S.D. 411, 125 N.W.2d 171 (1963); State v. Sauter, 48 S.D. 409, 205 N.W. 25 (1925).

Following the 1911 decision of the District Court in United States v. La Plant, 200 F. 92 (D.S.D.), the United States acquiesced in the assumption of jurisdiction of the state. See e.g., [1911] Annual Report of Cheyenne River Agency, § 1, nos. 3 & 12 (Doc. No. 12, Appendix C to the Brief of the Counties of Dewey, et al., Bartlett v. Solem, 691 F.2d 420 (8th Cir. 1982))[13]; Transcript

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13. A copy of this Appendix, which was before the court below but was not a part of the official record, has been lodged with the Court. Part C of the Appendix contains a number of pertinent federal agency documents from the National Archives which had not otherwise been made available to the court below. It is hereinafter cited as "Counties Ct. App. Appendix."

of Hearing, supra, at 25-26. The consistent exercise of State jurisdiction was recently recognized by the United States in its Brief in the Court of Appeals in United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973) (Amici App. D1-D33). Contrary to the position which it has espoused in this case, the United States in Erickson strenuously argued that the opened area was disestablished and that disestablishment intent is "clear from the provisions of the 1908 Act." Amici App. at D7. The United States further stated:

> The construction of the Act of 1908 by the court in LaPlant has been followed by the State of South Dakota and the Government for a period of about 71 years.
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> . . . .
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> . . . .
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> The history of city and state law enforcement in Eagle Butte has been based on the earlier decisions. To now add this area to Federal jurisdiction would not, in our opinion, be a proper move. . . .

Amici App. at D10-D11.

The long-standing assumption of jurisdiction by the state, unchallenged by the federal government until relatively recent years, is indicative of the accepted understanding of the meaning of the 1908 Act and is further confirmation that the Act had disestablishment effect. See Rosebud, 430 U.S. at 603-04. Cf. DeCoteau v. District County Court, 420 U.S. at 443-44.

2. Treatment of the Area by Federal Agencies

The treatment of the area in question by the federal officials responsible for the administration of Indian affairs and Indian lands in the years following the opening, leaves no doubt that these officials understood that the boundaries of the Cheyenne River Reservation had been altered by the opening. Numerous administrative documents refer to the opened area as the "former" reservation or as "ceded" lands, and describe the remaining area as the "diminished

reservation."[14] See Counties Ct. App. Appendix B.[15] In one particularly explicit

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14. The Respondent apparently deems it significant that officials occasionally referred to the opened area, together with the closed area, as "the reservation," without any qualifying adjective. Brief of Respondent in Opposition to Petition at 12. Some such references were made before the lands were opened, and when they remained, for all practical purposes, in reservation status. Other such references must be regarded simply as convenient geographical designations of an area which had been in reservation status and in which there was still a substantial amount of Indian trust land. See United States v. Oklahoma Gas and Electric Co., 318 U.S. 206, 216 (1943). Indeed, as the District Court noted in A Juvenile, such references are difficult to avoid. 453 F. Supp. at 1198. To argue that such references are significant, in light of the many unambiguous references to the "former" reservation and the like, is to propose the unlikely scenario of perpetual confusion among Interior officials as to the status of the area. It should be noted that present tense references like that cited by Respondent were also made with respect to the disestablished Rosebud and Lake Traverse reservation areas. See, e.g., Brief of Petitioner, DeCoteau v. District County Court at 39-43.

15. Counties Ct. App. Appendix B is a table listing the relevant passages in three categories of documents which are

example, the Superintendent of the Cheyenne River Agency described both the boundaries of the Reservation "[p]rior to the opening," and the "boundaries of the present diminished reservation". Doc. No. 29, Appendix III to Brief for the Counties of Dewey, et al., United States v. Dupris, 612 F.2d 319 (8th Cir. 1979) (designated part of the record herein).

Of major significance are Orders of Restoration issued by the Secretary of the Interior pursuant to Sections 3 and 7 of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 463 & 467. Order of June 12, 1941, 6 Fed. Reg. 3300; Order of January 10, 1949, 14 Fed. Reg. 471; Order of January 21, 1952, 17 Fed. Reg. 1065-66; Order of May 17, 1957, 22 Fed. Reg. 3693; Order of December 13, 1965, 30 Fed. Reg. 15588; Order of October 9, 1967, 32 Fed.

(cont.)
explained at p. 17 of the Counties' brief in the court below. Those documents not reproduced in Part C of the Appendix were filed in United States v. Dupris and have been made part of the record herein.

Reg. 14276. See also Order of September 19, 1936, 1 Fed. Reg. 1503 (Standing Rock). These Orders restored opened but unsold lands to tribal ownership under Section 3 of the 1934 Act (25 U.S.C. § 463), and declared the land to be "added to and made a part of the existing reservation" under Section 7 of the Act (25 U.S.C. § 467).[16] Obviously, it would have been entirely superfluous to add the unsold lands to the Cheyenne River reservation if they had never ceased to be part of it. Therefore, these Orders unmistakably reflect the understanding of the Secretary that the opened lands were no longer part of the reservation following the opening. United States v. A Juvenile, 453 F. Supp. at 1194; Stankey v. Waddell, 256 N.W.2d 117, 127 (S.D. 1977).

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16. All of the Orders explicitly refer to Section 7, and all but the 1949 and 1965 Orders contain the quoted language of restoration to reservation status.

Also significant is the cartographic record of the area in question following the opening. See DeCoteau v. District County Court, 420 U.S. at 442; United States ex rel. Cook v. Parkinson, 396 F. Supp. 473, 497-99 (D.S.D.), aff'd, 525 F.2d 120 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977). Thus, some maps plainly delineate the boundary between "Ceded Land" and the "Diminished Res[ervation]." Office of Indian Affairs, Maps of Cheyenne River Reservation, 1910 and 1919 [revised 1940]; Roads Division, Plat Map for Five Year Road Plan, 1938; Office of Indian Affairs, Map of Standing Rock Reservation, c. 1910 (certified copies of these maps from the National Archives have been lodged with the Court as Maps No. 1-4). Other maps identify the opened areas of the Cheyenne River and Standing Rock Reservation, as well as the other opened lands in South Dakota, as "Former Indian Reservations," or simply fail to include the opened area as part of the existing

reservation. Office of Indian Affairs Maps of Indian Reservations, 1919 and 1923; General Land Office Map of South Dakota, 1918 (Maps No. 5-7).

Thus, at least from 1908 to 1972, the interpretation placed on the 1908 Act by officials of the Department of the Interior was that the Act had resulted in disestablishment. This consistent, long-standing interpretation of the effect of a statute by the governmental agency responsible for its implementation is entitled to great deference, and should not be disregarded in the absence of compelling evidence to the contrary. See, e.g., E.P.A. v. National Crushed Stone Assn., 449 U.S. 64, 83 (1980); United States v. National Association of Securities Dealers, Inc., 422 U.S. 694, 718-19 (1975); Leary v. United States, 395 U.S. 6, 25 (1969). This is especially true of those examples of administrative construction which are contemporaneous with the passage of the

Act. See, e.g., Andrus v. Shell Oil Co., 446 U.S. 651, 667-68 (1980); Zenith Radio Corp. v. United States, 437 U.S. 443, 450 (1978).

To be sure, there has been a continued federal presence in the opened lands. However, the continuing administration of Indian affairs and the exercise of federal jurisdiction over Indian lands in no way signifies a continuation of reservation status, but instead flows from the federal government's supervisory authority for the welfare of Indians.[17] See, e.g., Rosebud, 430 U.S. at 615 n.48; DeCoteau, 420 U.S. at 442-43; United States v. Pelican, 232 U.S. 442, 449 (1914); United States v. A Juvenile, 453 F. Supp. at 1176, 1200-01. Moreover, trust allotments and tribal lands which have been restored to reservation status are unquestionably "Indian country" and subject

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17. It must also be remembered that the 1910 liquor amendment conferred federal jurisdiction over liquor traffic throughout the opened area for 25 years.

to federal jurisdiction. 18 U.S.C. §§ 1151(a) & (c). In addition, the opened area has always included substantial Indian lands -- both unsold surplus land and Indian allotments -- which have been administered by the federal government in its capacity as trustee. See Ash Sheep Co. v. United States, 252 U.S. 159 (1920); United States v. Pelican at 449; A Juvenile at 1200. In short, the opened Cheyenne River lands do not materially differ in this respect from the disestablished areas considered by this Court in Rosebud and DeCoteau. See Brief for Tribe 65-66, Rosebud; Brief for United States 22-26, DeCoteau.

In short, the jurisdictional history of the opened lands is very similar to that presented in Rosebud, and the statement of the Court in that case has equal applicability here:

> [T]he fact that neither Congress nor the Department of Indian Affairs has sought to exercise its authority over this area, or to challenge the State's exercise of authority is a factor entitled to weight as part of the "jurisdictional history." 430 U.S. 604.

3. Subsequent Judicial History

The subsequent treatment of the opened area by federal and state courts bolsters the conclusion that the 1908 Act was intended to reduce the boundaries of the Cheyenne River Reservation. In 1911, shortly after the area had been opened by presidential proclamation, the federal District Court held that the Act had the effect of diminishing the boundaries of the Cheyenne River Reservation by excluding the area opened to settlement, and that the area was therefore within the jurisdiction of the State. United States v. LaPlant, 200 F.

92, 93-94 (D.S.D. 1911).[18] This holding was reaffirmed in a series of opinions of the Supreme Court of South Dakota. State v. Barnes, 81 S.D. 511, 137 N.W.2d 683 (1965); Lafferty ex rel. State v. Jameson, 80 S.D. 411, 125 N.W.2d 171 (1963); State v. Sauter, 48 S.D. 409, 205 N.W. 25 (1925). Furthermore, the disestablishment effect of the 1908 Act is recognized in two subsequent decisions of the District Court. United States v. Dewey County, 14 F.2d 784, 785, 789 (D.S.D. 1926), aff'd on other grounds, 26 F.2d 434 (8th Cir. 1928) ("old" reservation - "diminished portions"); United States v. Pearson, 231 F.

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18. LaPlant was cited with approval in two subsequent decisions of the Eighth Circuit. Beardslee v. United States, 387 F.2d 280, 286 (8th Cir. 1967); Kills Plenty v. United States, 133 F.2d 292, 294 (8th Cir.), cert. denied, 319 U.S. 759 (1943). In Putnam v. United States, 248 F.2d 292, 295 (8th Cir. 1952), the court held that LaPlant was not valid precedent for the assertion that an Indian allotment in a former reservation area was part of the public domain, but did not question the basic holding of LaPlant.

270, 271 (D.S.D. 1916) ("former" reservation").

The courts consistently treated the opened Cheyenne River lands as disestablished until 1970, when one judge of the Eighth Circuit made the suggestion, in a dissenting opinion, that the area had not been disestablished. United States ex rel. Miner v. Erickson, 428 F.2d 623, 627 n.11 (8th Cir. 1970) (Lay, J., dissenting). Two years later, a judge of the District Court agreed. United States ex rel. Condon v. Erickson, 344 F. Supp. 777 (D.S.D. 1972). The Eighth Circuit affirmed, effectively reversing the previously established precedent. United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973).

However, the state Supreme Court has continued to hold that the 1908 Act disestablished the affected portion of the reservation. Stankey v. Waddell, 256 N.W.2d 117 (S.D. 1977); State v. Janis, 317 N.W.2d

133 (S.D. 1982). Although the District Court re-examined the question and held that the Act did have disestablishment effect, United States v. A Juvenile, 453 F. Supp. 1171 (D.S.D. 1978), the Eighth Circuit adhered to its earlier decision in Erickson and reversed the District Court over a dissent by Judge McMillian. United States v. Dupris, 612 F.2d 319 (8th Cir. 1979). That judgment was later vacated by this Court, 446 U.S. 980 (1980), and the Eighth Circuit, in a split en banc decision, reaffirmed Erickson and Dupris in the instant case.[19]

It is apparent from the above discussion that until the decisions in Erickson, there had been over sixty years of consistent judicial precedent affirming the disestablishment of the opened area and the assumption of jurisdiction by the state. Cf.

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19. Two of the seven judges of the Court dissented, believing that Erickson required modification in light of Rosebud and DeCoteau.

DeCoteau, 420 U.S. at 449. This presumption of the courts was shared by the Executive Branch and Congress and thus carries considerable weight. See Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 206 (1978). As in Rosebud, this commonly shared presumption "has created justifiable expectations which should not be upset by so strained a reading" of the 1908 Act as urged by Respondent.

CONCLUSION

This Court has cautioned more than once that the determination of questions such as that presented here cannot rest on present-day conceptions of the wisdom of past legislative decisions, but that the focus instead is on legislative intent at the time the statute in question was passed. Rosebud Sioux Tribe v. Kneip, 430 U.S. at 615, DeCoteau v. District County Court, 420 U.S. at 449. When the available relevant materials are viewed from the proper historical perspective,

and in light of the decisions of this Court, the only reasonable conclusion that can be drawn is that Congress intended to disestablish the area opened under the 1908 Cheyenne River Act.

Dated this 4th day of August, 1983.

Respectfully submitted,

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APPENDICES

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COMPARISON OF PERTINENT PROVISIONS OF 1908 CHEYENNE RIVER ACT AND 1907 AND 1910 ROSEBUD ACTS

Act of May 29, 1908, ch. 218, 35 Stat. 460	Act of Mar. 2, 1907, ch. 2536, 34 Stat. 1230	Act of May 30, 1910, ch. 260, 36 Stat. 448
An Act To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.	An Act To Authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.	An Act To authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

[Sec. 1] That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota lying and being within the following described boundaries, to-wit: . . . except such portions thereof as have been allotted to Indians. . . .

[Sec. 1] That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians . . . .

[Sec. 1] That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: . . . . except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands . . . .

[Sec. 1] . . . Provided, That sections sixteen and thir y six of the lands in each township therein shall not be disposed of, but shall be reserved for the use of the common schools of the States of South Dakota and North Dakota, as the same may be located in the said States, respectively. . . .

[Sec. 1] Provided, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose.

[Sec. 1] . . . Provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious

[Sec. 1] . . . And provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or

institutions are maintained thereon for the benefit of said Indians. . . .

Sec. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to

religious institutions are maintained thereon for the benefit of said Indians. . . .

Sec. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon,

settle upon, occupy, or enter any of said lands except as prescribed in such proclamation. . . .

Sec. 2. . . . Provided, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in section one of this Act to relinquish such allotment and to receive in lieu thereof an allotment anywhere within the respective reservations thus diminished to which reservation the said Indians may belong. . . .

settle upon, occupy, or enter any of said lands except as prescribed in such proclamation. . . .

Sec. 2. . . .Provided, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation. . . .

. . . .

occupy, or enter any of said lands except as prescribed in such proclamation. . . .

[Sec. 1] . . . Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation . . . .

Sec. 2. . . . Provided further, That prior to the said proclamation the Secretary of the Interior shall cause allotments to be made to every man, woman, and child belonging to or holding tribal relations in said Cheyenne River and Standing Rock reservations who have not heretofore received the allotments to which they are entitled under provisions of existing laws. . . .

Sec. 2 . . . Provided further, That the Secretary of the Interior be, and he is hereby,

Sec. 2. . . . Provided, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed. . . .

authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress. . . .

Sec. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be

Sec. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be

Sec. 4. That the price of said lands entered as homesteads under the provisions of this Act shall be

fixed by appraisement as herein provided. The President of the United States shall appoint two commissions, one for each reservation, each commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six in each of said townships. . . .That said commissioners shall then proceed to personally inspect, classify, and appraise, in one

as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, four dollars and fifty cents per acre; after the expiration of six months after the same shall have been opened for settlement and entry the price shall be two dollars and fifty cents per acre. . . .

fixed by appraisement, as herein provided. The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been alloted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships. . . . The said commissioners shall then proceed to personally inspect, classify, and appraise,

hundred and sixty acre tracts each, all of the remaining lands embraced within each reservation as described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised.

in one hundred and sixty acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: Provided, That timber lands may be

Sec. 4. That the price of said lands shall be paid in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four,

Sec. 3. . . . The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years,

classified without regard to acreage: And provided further, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians. . . .

Sec. 6. That the price of said lands disposed of under the homestead laws shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments, to be

and five years, respectively, from and after the date of entry.

Sec. 4. . . . And provided further, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act. And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for

respectively, from and after the date of entry.

Sec. 3. . . . And provided further, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven

paid in two, three four, five, and six years, respectively, from and after the date of entry.

Sec. 6. . . .And provided further, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act.

cash without regard to the prescribed price thereof fixed under the provisions of this Act, under such rules and regulations as the Secretary of the Interior may prescribe.

Sec. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe. . . . The net proceeds derived from the sale of such

years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe. . . . The net proceeds derived from the sale of such

Sec. 3. . . . [T]he Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe. . . .The net proceeds derived from the sale of such

lands shall be credited to the Indians as hereinafter provided.

Sec. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the

lands shall be credited to the Indians as hereinafter provided.

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the

lots and lands within the townsites as aforesaid, less the amount set aside to aid in the construction of schoolhouses or other public buildings or improvements, shall be credited to the Indians, as hereinafter provided.

Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said

reservations aforesaid in the States of South Dakota and North Dakota the sums to which the respective tribes may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians respectively shall be expended for their benefit under the direction of the Secretary of the Interior.

Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in

reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization.

the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior. . . .

Sec. 7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at one dollar and twenty-five cents per acre, and the same are hereby granted to the States of

Sec. 6. That sections sixteen and thirty-six of the lands in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South

Sec. 8. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South

South Dakota and North Dakota for such purpose as the same are located in the said States respectively; and in case any of said sections, or parts thereof, are lost to said States by reason of allotments thereof to any Indian or Indians, or otherwise, the governors of said States, respectively, with the approval of the Secretary of the Interior, are hereby authorized, within the area in the respective States described in section one of this Act, to locate other lands not occupied. . . .

Dakota for such purpose; and in case any of said sections, or parts thereof, are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied. . . .

Dakota for such purpose, and in case any of said sections, or parts thereof, are lost to said State by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this Act, to locate other lands not otherwise appropriated . . . .

[As amended by Act of February 17, 1910, ch. 40, 36 Stat. 196]:

Sec. 8. . . . . And provided further, That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the said States, or otherwise disposed of under the provisions of this Act, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

Sec. 10. That the lands allotted, those retained or reserved, and the surplus land sold, set aside for town-site purposes, granted to the State of South Dakota, or otherwise disposed of, shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

Sec. 9. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale

Sec. 8. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale

Sec. 11. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands, and to expend and pay over the proceeds received from the sale

thereof only as received and as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Cheyenne River or Standing Rock Indian reservations, in South Dakota and North Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act. . . .

thereof only as received, as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

thereof only as received and as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Provided, That Indians residing upon their allotments in townships sixteen north of ranges twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one east shall have the right to use timber in said townships, except on sections sixteen and thirty-six for domestic purposes only as long as the lands remain part of the public domain.

CONGRESSIONAL DEBATE OF 1908
CHEYENNE RIVER LEGISLATION

42 Cong. Rec. 4753-55 (Senate, April 15, 1908)

LANDS IN SOUTH DAKOTA

The bill (S. 1385) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The bill was reported from the Committee on Indian Affairs with amendments.

The first amendment was, in section 1, line 6, to strike out the word "State" and insert "States," and in line 7, after the words "South Dakota," to insert "and North Dakota" so as to read:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota.

The amendment was agreed to.

The next amendment was, on page 1, line 7, after the word "the," to strike out the words "county of Schnasse, in said state," and insert:

Following-described boundaries, to wit: Beginning at a point in the center of the main channel of the Cheyenne River on the southern boundary of the Cheyenne River Indian Reservation, in the State of South Dakota, where the range line between ranges 23 and 24 east of the Black Hills meridian intersects the same; thence north on said range line to a point where the same intersects

the township line between townships 15 and 16 north; thence east along said township line to a point in the center of the main channel of the Missouri River, thence in a northerly direction along the center of the main channel of said Missouri River to a point where the township line between townships 18 and 19 north intersects the same, and including also entirely all islands, if any, in said river; thence west on said township line to a point where the range line between said ranges 23 and 24 intersects the same; thence north along said range line to the State line between the States of South Dakota and North Dakota; thence west on said State line to a point where the range line between ranges 84 and 85 west in North Dakota intersects the same; thence north on said range line to a point where said range line intersects the center of the main channel of the South Fork of the Cannon Ball River; thence in a westerly direction up and along the center of the main channel of the said river to a point where the same intersects the one hundred and second meridian of longitude; thence south along said one hundred and second meridian of longitude to a point where the same intersects the center of the main channel of the Cheyenne River; thence in a northeasterly direction along the center of the main channel of said Cheyenne River to place of beginning.

Mr. GAMBLE. Mr. President, I submit a substitute for the committee amendment.

The VICE-PRESIDENT. The amendment to the amendment will be stated.

The Secretary. In lieu of the committee amendment striking out the words "county of Schnasse, in said State," and inserting certain other words, it is proposed to insert the following:

Following-described boundaries, to wit: Beginning at a point on the one hundred and second meridian of longitude west, where the township line between townships 9 and 10 north intersects the same; thence east on said township line to a point where the same intersects the range line between ranges 24 and 25 east of the Black Hills meridian; thence north on said range line to a point where the same intersects the township line between townships 15 and 16 north; thence east along said township line to a point in the center of the main channel of the Missouri River; thence in a northerly direction along the center of the main channel of said Missouri River to a point where the towship line between townships 18 and 19 north intersects the same, and including also, entirely, all islands, if any, in said river: thence west on said township line to a point where the range line between ranges 22 and 23 east intersects the same; thence north along said range line to the northwest corner of section 19, in township 21 north, of range 23 east; thence east on the section line north of sections 19, 20, 21, 22, 23, and 24 to a point where the same intersects the range line between ranges 23 and 24 east; thence north along said range line to the State line between the States of South Dakota and North Dakota; thence west on said State line to a point where the range line between ranges 84 and 85 west, in North Dakota, intersects the same; thence north on said range line to a point where said range line intersects the center of the main channel of the South Fork of the Cannon Ball River; thence in a westerly direction up and along the center of the main channel of the said river to a point where the same intersects the one hundred and second meridian of longitude west; thence south along said one hundred and second meridian of longitude west to the place of beginning.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment of the Committee on Indian Affairs was, in section 1, page 3, line 8, to strike out "State," and insert "States," and in line 9, after the words "South Dakota," to insert "and North Dakota, as the same

may be located in the said States, respectively;" so as to make the proviso read:

Provided, That sections 16 and 36 of the lands in each township therein shall not be disposed of, but shall be reserved for the use of the common schools of the States of South Dakota and North Dakota, as the same may be located in the said States, respectively.

The amendment was agreed to.

The next amendment was, in section 2, page 3, line 22, to strike out the words, "said county of Schnasse" and insert "area described in section 1 of this act."

The amendment was agreed to.

The next amendment was, in section 2, page 4, line 7, to strike out the words "boundaries of Schnasse County, S. Dak." and insert "area described in section 1 of this act."

The amendment was agreed to.

The next amendment was to insert on page 4, line 10 after the word "laws," the following proviso:

Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition under the homestead laws, to be disposed of in accordance with the coal-land laws of the United States for the benefit of the tribes in common.

The amendment was agreed to.

The next amendment was, in section 3, page 5, line 4, to strike out the words "a commission consisting" and insert "two commissions, one for each reservation, each commission to consist;" in line 10 to strike out "said" and

insert "each" before "commission;" in line 13 to strike out the words "or the other;" and in line 14, after the word "Indians," to strike out the following words:

And the said commissioner last named shall act thereon while the appraisement and classification of the lands is made on the particular reservation to which he belongs, and when the appriasement and classification of the lands is completed on the reservation to which said last-named commissioner belongs another commissioner with like qualification shall be appointed, with like power, to act with the other members of said commission to appraise and classify the lands herein granted on the other reservation.

So as to read:

That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisement as herein provided. The President of the United States shall appoint two commissions, one for each reservation, each commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior, or otherwise disposed of, and excepting sections 16 and 36 in each of said townships, each commission to be constituted as follows: One resident citizen of the State of South Dakota, one representative of the Indian bureau, and one person holding tribal relations with one of said tribes of Indians.

The amendment was agreed to.

The next amendment was, in section 3, page 5, line 23, after the word "appointment," to insert "the;" in line 24, after "commissioners," to insert "so appointed for each of the said reservations, respectively;" and in line 25, to strike out the words "said county of Schnasse," and insert "area described in section 1 of this act upon the reservations for which they were respectively appointed, and each commission shall," so as to read:

That within twenty days after their appointment the said commissioners so appointed for each of the said reservations, respectively, shall meet at some point within the area described in section 1 of this act upon the reservations for which they were respectively appointed, and each commission shall organize by the election of one of their number as chairman.

The amendment was agreed to.

The next amendment was, in section 3, page 6, line 4, before the word "commission," to strike out "Said" and insert "Each;" in line 5, to strike out "a clerk" and insert "such clerks and assistants as may be necessary;" and in line 7, after the word "day," to insert "subject to the approval of the Secretary of the Interior," so as to read:

Each commission is hereby empowered to select such clerks and assistants as may be necessary at a salary of not to exceed $5 perday subject to the approval of the Secretary of the Interior.

The amendment was agreed to.

The next amendment was, in section 3, page 6, line 9, after the word "appraise," to strike out "by the smallest legal subdivisions of 40 acres" and insert "in 160-acre tracts;" and in line 11, after the word "within," to strike out "the particular reservation first appraised, and after reorganization as above specified the said commission shall proceed to personally inspect, classify, and appriase as aforesaid all the remaining lands embraced within the other reservation hereby granted and conveyed" and insert "each reservation as described in section 1 of this act," so as to read:

That said commissioners shall then proceed to personally inspect, classify, and appriase, in 160-acre tracts each, all of the remaining lands embraced within each reservation as described in section 1 of this act.

The amendment was agreed to.

The next amendment was, in section 3, page 6, line 25, after the word "lands," to insert "and necessary expenses to be approved by the Secretary of the Interior;" on page 7, line 2, before the word "months," to strike out "four" and insert "six;" in line 3, to strike out "commission" and insert "commissions respectively;" and in line 4, to strike out "commission" and insert "commissions," so as to read:

In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised. That said commissioners shall be paid a salary of not to exceed $10 per day each while actually employed in the inspection and classification of said lands and necessary expenses to be approved by the Secretary of the Interior; such inspection and classification to be completed within six months from the date of the organization of said commissions respectively. That when said commissions shall have completed the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

The amendment was agreed to.

The next amendment was, in section 4, on page 8, line 11, after the word "act," to insert:

And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this act, under such rules and regulations as the Secretary of the Interior may prescribe.

The amendment was agreed to.

The next amendment was, in section 6, page 9, line 6, after the words "in the," to strike out "State" and insert "States;" in the same line, after the name "South Dakota," to insert "and North Dakota;" in line 8, after the words "per annum," to strike out "for ten years," in line 10, after the word "alike," to strike out "that at the expiration of ten years the one-half of the amount so realized from the sale and disposition of the lands herein provided for and deposited as aforesaid to the credit of each of said tribes shall be distributed and paid to said Indians per capita respectively in cash; the balance thereof so," and insert "that the moneys derived from the sale of said lands and;" and in line 21, after the word "same," to insert "annually," so as to make the section read:

SEC. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the reservations aforesaid in the States of South Dakota and North Dakota as the respective tribes may be entitled to thereto, which shall draw interest at 3 per cent per annum, the interest to be paid to the Indians per capita in cash annually, share and share alike; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians respectively, shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an applicatin of a majority of the

Indians of either tribe, pay a portin of the same annually to the Indians so applying in cash, per capita, share and share alike, if, in his opinion, such payments will be for the best interests of said Indians.

The amendment was agreed to.

The next amendment was, in section 7, on page 10, line 5, after the word "at," to strike out "one dollar and twenty-five" and insert "two dollars and fifty;" in line 6, after the words "to the" to strike out "State" and insert "States;" in line 7, after the name "South Dakota," to insert "and North Dakota;" in line 8, after the word "purpose;" to insert "as the same are located in the said States, respectively;" in line 10, after the word "said," to strike out "State of South Dakota" and insert "States;" in line 11, after the word "the," to strike out "governor," and insert "governors;" in line 12, after the word "said," to strike out "State," and insert "States, respectively;" in line 13, before the word "hereby," to strike out "is" and insert "are;" in line 14, and after the word "the," to strike out "tract described herein" and insert "area in the respective States described in section 1 of this act," so as to make the section read:

SEC. 7. That sections 16 and 36 of the land in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at $2.50 per acre, and the same are hereby granted to the States of South Dakota and North Dakota for such purposes as the same are located in the said States, respectively: and in case any of said sections, or parts thereof, are lost to said States by reason of allotments thereof to any Indian or Indians, or otherwise, the governors of said States, respectively, with the approval of the Secretary of the Interior, are hereby

authorized, within the area in the respective States described in section 1 of this act, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

The amendment was agreed to.

The next amendment was, in section 8, on page 10, line 22, before the word "thousand," to strike out "seventy-five" and insert "four hundred and fifteen;" in line 24, after the words "to the," to strike out "State" and insert "States;" in line 24, after the name "South Dakota," to insert "and North Dakota," and, on page 11, line 2, before the word "thousand," to strike out "twenty," and insert "seventy-five," so as to make the section read:

SEC. 8. That there is hereby appropriated out of any money in the Treasury not otherwise appropriated the sum of $415,000, or so much thereof as may be necessary, to pay for the lands granted to the States of South Dakota and North Dakota, as provided in section 7 of this act. And there is hereby appropriated the further sum of $75,000, or so much thereof as may be necessary, for the purpose of making the appraisement and classification and allotments provided for herein: Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribes respectively.

The amendment was agreed to.

Mr. GAMBLE. On page 11, line 5, I move to strike out the word "same," and insert in lieu thereof the words "latter appropriation."

The VICE-PRESIDENT. The amendment proposed by the Senator from South Dakota will be stated.

The SECRETARY. In section 8, page 11, line 5, before the word "shall," it is proposed to strike out the word "same," and to insert "latter appropriation," so that if amended it will read:

That the latter appropriation shall be reimbursed to the United States, etc.

The amendment was agreed to.

The next amendment of the Committee on Indian Affairs was, in section 9, page 11, line 21, after the name "South Dakota," to insert "and North Dakota," so as to make the proviso read:

Provided, That nothing in this act shall be construed to deprive the said Indians of the Cheyenne River or Standing Rock Indian Reservations in South Dakota and North Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

The amendment was agreed to.

Mr. GAMBLE. On page 11, line 23, after the word "act," I move to insert what I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from South Dakota will be stated.

The SECRETARY. At the end of the bill it is proposed to insert:

Provided, That Indians residing upon their allotments in townships 16 north of ranges 25, 26, 27, 28, 29, 30, and 31 east shall have the right to use timber in said townships, except on sections 16 and 36, for domestic purposes only as long as the lands remain part of the public domain.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed the third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect."

42 Cong. Rec. 7003-07 (House, May 26, 1908)

OPENING CHEYENNE RIVER AND STANDING ROCK INDIAN RESERVATIONS.

Mr. SHERMAN. Mr. Speaker, I move to suspend the rules and pass Senate bill 1385, with the amendments that I present.

The Clerk read as follows:

[The text of the bill as passed by the Senate appears here.]

Mr. WILLIAMS. Mr. Speaker I ask for a second.

The SPEAKER. The gentleman from Mississippi demands a second; under the rule a second is ordered. The gentleman from New York (Mr. SHERMAN) is entitled to twenty minutes and the gentleman from Mississippi (Mr. WILLIAMS) is entitled to twenty minutes.

Mr. SHERMAN. Mr. Speaker, this bill opens a portion of the Cheyenne and Standing Rock reservations, in the States of South and North Dakota. The two

reservations contain about five and a quarter million acres, and the portion that is opened under this bill is about one-half of the two reservations. The reservations are to be opened by the proclamation of the President, but not until all of the Indians of the tribes upon the two reservations are fully allotted. There are of these Indians, in round numbers, about 6,000. Some of them already have been allotted, and to the balance allotments must be made under the general allotment act, which provides that 160 acres must be allotted to each head of a family, 80 acres to every minor over 18 years of age, the same amount to every minor under 18 years of age, provided the minor is an orphan, and 40 acres to each minor whose parents are living.

The bill also provides that surveys shall be made of both reservations before allotments are made; and also that, through the Secretary of the Interior, and by the proper officials of the Geological Survey, a survey shall be made to ascertain whether there be any coal deposits upon either reservation, it being believed by some that there are such valuable deposits; and if it be discovered there are such deposits, those lands are to be reserved from sale or disposal until some future action of Congress; in other words, shall be held in trust for the Indians.

The lands are very valuable. Civilization has come up to a point close to the reservation. One railroad has already been projected through the reservation and another one has reached the border on the east, and is ready to push the line through the reservation as soon as it opens up for settlement.

The amount of land that will be required to allot fully to all of the Indians will be, I should guess without analyzing the census of the Indians, as one can not get the figures exactly, in the neighborhood of 600,000 acres. So that of the amount still reserved from opening under this bill there will be nearly 2,000,000 acres of land, which can be used as general pasturelands and the like.

The land is to be appraised on each reservation by a separate commission appointed by the Secretary of the Interior. The commissions are to be made up of one enrolled member of the tribe — he may be full blood or partial blood — one representative of the Indian Office, and one citizen of either the State of North or South Dakota; in other words, a commission which is supposed to be best qualified to pass upon the value of the land.

Then the lands are to be sold at the appraised value, one-fifth of the purchase price to be paid in cash upon entry of the land, the other four-fifths in five equal annual payments. Whatever land is undisposed of at the end of four years is to be reappraised and then again offered for sale upon the same conditions as the land was originally offered for sale. Any land not disposed of at the end of seven years is to be offered for sale and disposed of to the highest bidder.

A provision is made for the reservation of so much of the land taken under this bill for disposal as the Secretary of the Interior may think is necessary to provide for future town sites, and it is to be surveyed, appraised, and disposed of in the manner that town sites are ordinarily disposed of.

The expense of carrying out all the provisions of this act are to be paid out of the appropriation made herein, but to be refunded to the Treasury of the United States from the proceeds of the lands sold; and the surplus arising from the sale of this land is to be deposited in the Treasury of the United States, to the credit of these Indians, to draw 3 per cent interest, and to be expended from time to time, not the principal, but the interest, for the benefit of these Indians in such manner as the Secretary of the Interior thinks proper.

Mr. FINLEY. Will the gentleman yield?

Mr. SHERMAN. Yes.

Mr. FINLEY. About what is the quality of the land to be disposed of.

Mr. SHERMAN. The quality is excellent.

Mr. FINLEY. Fine land, is it?

Mr. SHERMAN. It is good agricultural and grazing land. A very large percentage of it is agricultural land.

Mr. FINLEY. Worth about how much?

Mr. SHERMAN. Oh, it is difficult to say; it is worth, I should say, from $2.50 to $5.00 per acre.

Mr. FINLEY. Would not that be a very small valuation for excellent land?

Mr. SHERMAN. Well, it would be hard to tell if it would be worth a larger valuation, because you know a road has not yet gone through the part which is to be disposed of under this bill, and of course as you provide transportation through lands you make the property accessible and its value will increase.

That is a mere guess. Later on the gentleman from South Dakota [Mr. HALL] will occupy some time, and he perhaps can give a better idea of the value of the land per acre than I can.

Mr. FINLEY. I observe from reading the bill that one of the commissioners to be appointed is a person who has tribal relations. Does that mean an Indian agent?

Mr. SHERMAN. Oh no; it means an enrolled member of the tribe, but not necessarily one of full blood.

Mr. FINLEY. Would it mean an attorney?

Mr. SHERMAN. Oh, no; it means an enrolled member of the tribe, but not necessarily of full Indian blood.

Mr. FINLEY. This land is not arid, is it?

Mr. SHERMAN. Oh, no.

Mr. FINLEY. Nor semiarid?

Mr. SHERMAN. No; not arid land at all. Now the bill further provides for a transfer to the States of North and South Dakota of sections 16 and 36 in each township. The enabling act of those two States provided that the United States should eventually cede such sections to the States, respectively, for school purposes. We make appropriation herein for payment to the Indians for the land thus taken. That will amount to something like 160,000 acres.

Mr. WILLIAMS. How much per acre does it pay?

Mr. SHERMAN. One dollar and twenty-five cents per acre.

Mr. WILLIAMS. For sections 16 and 36?

Mr. SHERMAN. Yes; in each township.

Mr. WILLIAMS. Was there not an agreement with the Indians some time since to pay them $2.50 an acre?

Mr. SHERMAN. No; there was not exactly an agreement. An Indian agent has visited them, and they expect $2.50 an acre. They desire $2.50 an acre; that is correct.

Mr. HALL. He said he would recommend that.

Mr. SHERMAN. The agent who visited the Indians stated to them on the occasion of his visit that he would recommend the taking of sections 16 and 36 at $2.50 an acre. There was nothing like a regular agreement, but there was a general conference had to ascertain whether it was the desire of the Indians that these lands should be opened, and it was ascertained that that was the desire, and the agent said to the Indians that he would make this recommendation.

Mr. WILLIAMS. Does not the gentleman from New York think that, in view of that recommendation and in view of the fact that that probably entered into the willingness of the Indians to part with the land, and was a part of the consideration, this Government, which expends a good deal of money, could afford to pay these people $2.50 an acre?

Mr. SHERMAN. I have no doubt the United States Government could afford to pay these people $2.50 an acre.

Mr. WILLIAMS. Do not you think that it could afford to do it as a matter of justice and right?

Mr. SHERMAN. I think it is fair for us to take into consideration that our going in there and opening up

these lands and providing for their development, providing for the settlement of white citizens there, so enhances the value of the other lands that that should be considered as a part of the compensation for the land disposed of to the States.

Mr. WILLIAMS. Now, what will be the value of these lands, in the gentleman's estimation, after the railroads get there and the land is opened up and developed by railroad construction?

Mr. SHERMAN. Oh, I should suppose that eventually most of this land—

Mr. WILLIAMS. Good farming land is getting to be pretty scarce.

Mr. SHERMAN. Yes; I should suppose the greater part of this land before a very great length of time ought to be worth in the neighborhood of $10 an acre. Let me ask my friend from South Dakota if that is correct?

Mr. HALL. Yes.

Mr. WILLIAMS. The highest price we are going to get for them is $5?

Mr. SHERMAN. Oh, no; the land is to be appraised. In answer to somebody's question I said I thought perhaps the value of the land at the present time was anywhere from $2.50 to $5 an acre, but the land is to be appraised, and is to be sold at the appraised value.

Mr. WILLIAMS. By whom is it to be appraised?

Mr. SHERMAN. By commissions to be appointed by the Secretary of the Interior, those commissions on each reservation to consist of one member of the tribe, one official from the Indian Office, and one citizen of

the State of either North or South Dakota, in which the reservations are located.

Mr. WILLIAMS. Does the gentleman or does he not think if these lands were opened up upon what we call the Oklahoma plan, letting people go in and pay what the lands are worth, that they would be much more rapidly settled and the Indians would get very much more money?

Mr. SHERMAN. I would rather somebody who has had more experience than I in reference to such openings would answer that question. If the gentleman from Mississippi will permit me to ask the gentleman from South Dakota [Mr. Hall], who is more conversant than I, I would be very glad to do so.

Mr. WILLIAMS. I suppose the gentleman from South Dakota would not know nearly as much as would the gentleman from New York about what happened in Oklahoma, as the gentleman from New York was then on the Indian Affairs Committee.

Mr. HALL. What is the Oklahoma plan?

Mr. SHERMAN. Sealed bids.

Mr. WILLIAMS. Letting them go and look at the land and paying what those lands are worth. I can not see why when Oklahoma was to be settled it was treated one way and when other reservations are to be opened they are treated another.

Mr. SHERMAN. I will confess or admit that I like the sealed-bid plan myself, and if I were originally drawing the bill, I think I would always provide that the lands be disposed of on sealed bids. This is a Senate bill that is now before us. This bill did not originate in the House.

Mr. WILLIAMS. I understand, but it had a House amendment upon it.

Mr. SHERMAN. Oh, yes.

Mr. WILLIAMS. It might have had another House amendment upon it.

Mr. SHERMAN. The gentleman is correct. It might have had, and yet I believe that no injustice will be done to the Indians; that they may expect to receive a fair return for all of the land disposed of under the plan provided in this bill. There was some question whether the Secretary would be permitted to name a citizen member of the Commission from anywhere in the United States, and so that we might have a citizen member who was most likely to have knowledge of the value of the property, we made the limitation to the House amendment that that member must be a citizen of the States either of North or of South Dakota.

Mr. FINLEY. I would like to ask the gentleman a question. In section 7 of the bill it provides that sections 16 and 36 are to be reserved for school urposes and to be paid for by the Government of the United States at the rate of $2 per acre. I wish to ask the gentleman this. When the State of South Dakota was made a State, was or not the State of South Dakota given school lands or lieu lands for school purposes to correspond with the amount of Indian lands held by Indians in reservations like this?

Mr. SHERMAN. Oh, no. I am very sure that that was not done in either of the Dakotas, because it has not been done anywhere, so far as I know.

Mr. FINLEY. The States have not been granted lieu lands where lands were held by the Indians?

Mr. SHERMAN. There have been times later on when Indian reservations have been opened up that that has been done, but there are no lieu lands that could be used in the Dakotas at the present time.

Mr. FINLEY. When the Territory was created into a State, a provision was made for the homesteaders?

Mr. SHERMAN. A provision was made in the enabling act that the United States grant to the States sections 16 and 36 for school purposes.

Mr. FINLEY. Right here, was any calculation taken of the lands held by Indians—

Mr. SHERMAN. I will ask the gentleman from South Dakota [Mr. Hall] to answer the question.

Mr. HALL. I will say that the enabling act under which South Dakota, North Dakota, Washington, and Montana were admitted—it was an omnibus bill—provided for the granting in presenti of sections 16 and 36 for school purposes, and then it provided that in the case of the Indian reservations that grant of these sections for school purposes should be held in abeyance until the reservation was opened. Does that answer the gentleman's question?

Mr. FINLEY. Yes.

Mr. SHERMAN. I will reserve the balance of my time.

Mr. MANN. Will the gentleman yield for a question?

Mr. SHERMAN. Yes.

Mr. MANN. If this bill becomes a law, I know I should have a great many inquiries about how people can get the land. I have not heard it explained.

Mr. SHERMAN. I have attempted to explain it. Possibly the gentleman was not here. It is to be opened under the proclamation of the President after surveys have been made, and upon terms that he states in the proclamation.

Mr. MANN. That is what I understood; but what terms is he going to state in the proclamation? Does anyone know?

Mr. SHERMAN. I have also stated that, that the land will be appraised—

Mr. MANN. I have heard all that, but what I do not know is by what process, if I want to obtain some of this land, I would proceed.

Mr. SHERMAN. You would proceed in this way: After the proclamation had been made you would then apply through the land office for a particular portion of the land which you desired to acquire title to, and by leaving with them the money, laying down one-fifth of the price of the entry to which you made claim, and paying the other four-fifths in five equal annual payments—

Mr. MANN. I understood from the gentleman, and that is what I wanted to understand, that the land was to be sold on secret bids after an appraised valuation—

Mr. SHERMAN. No; sold for an appraised valuation.

Mr. MANN. Who gets the land if forty people make claim for the same piece?

Mr. SHERMAN. Under the general land law.

Mr. MANN. Is there to be a rush for the land?

Mr. SHERMAN. Will the gentleman from South Dakota answer the gentleman?

Mr. HALL. I will endeavor to explain the matter to the gentleman. The application will be made substantially under the homestead law. A person entering the land which is to be disposed of under the provisions of this act will have to conform to the requirements of existing law concerning homesteads. In addition he will be required to pay this price in five annual installments.

Mr. MANN. That means a rush for the land.

Mr. HALL. No; I will get to that in a moment. In the Rosebud Reservation, a portion of which was opened two or three years ago, the methods adopted by the Department then so as to avoid this confusion and avoid these horse races was that persons might register for land. Then after a certain period and on a certain date a drawing was had of the number of claims that there were for disposal. They were drawn by lots so as to be absolutely fair.

Mr. MANN. This is the Oklahoma plan to which the gentleman from Mississippi referred.

Mr. HALL. This is not sealed bids.

Mr. MANN. But I understand the drawing plan was the Oklahoma plan to which I understood the gentleman from Mississippi referred. Is that to be the plan?

Mr. HALL. I did not so understand him. I understood him to say there were sealed bids for the land. In this case the price is fixed by this Commission and

the lands are selected by lot in the manner in which I have indicated so as to avoid this confusion and rush.

Mr. MANN. In the same method which was used at the Rosebud Agency.

Mr. HALL. Yes. I assume that will be the method adopted by the Department.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. WILLIAMS. Mr. Speaker, I yield five minutes to the gentleman from Oklahoma [Mr. Carter].

Mr. CARTER. Mr. Speaker, I do not think I desire to use all of that time. It shall not be my purpose to enter into a discussion of the merits or demerits of this bill, but I do desire to explain my vote upon this measure. I am in favor of this bill as it was passed by the Senate and as it was thereafter reported by the House Committee on Indian Affairs, but I do not favor this amendment cutting down the price of the school lands from $2.50 an acre to $1.25 an acre. I do not favor that for the reason that there was what should be considered to all intents and purposes an agreement with those Indians in which they were promised by the Indian agent $2.50 per acre for sections 16 and 36. That is explained in the report, but I will not take up the time of the House to read it. I will say, however, that the exigencies of the occasion will somewhat influence my vote.

We can not afford, Mr. Speaker, to retard the progress of these two States by a minor matter like this, in my opinion. The States of North and South Dakota have, as I understand, something more than 2,000,000 acres

of land involved in this proposition which can not be settled until some kind of an arrangement is made, as this bill provides, for the opening up of this reservation, and for that reason I expect to vote for this bill in the hope that when it goes into the conference committee the conferees will see their way clear to keep their agreement with the Indians and award them $2.50 an acre for sections 16 and 36. Now, there is one proposition which should always be taken into consideration in the opening of an Indian reservation, and that is this, that prior to the time of the opening of that reservation the lands are not worth near so much money as they are after the farmers begin to come in, settle, and build homes.

That is what makes the land valuable. The farmers can not come in under the present system, which is as it has been in my State, Oklahoma. They can not come in, and they can not improve the land. But when they do come in this land will be improved, and as it is improved it will increase in value all the land on what is now the reservation, including the allotments of the Indians who now own the lands. As the land around each Indian's allotment is improved and put in a higher state of cultivation just in that proportion will the Indian's original allotment increase in value and be made more productive. So that within a few years the Indian's allotment of 160 acres should be worth as much as all of his lands at present, including allotment and lands sold under the provisions of this bill. It would be a good deal for the Indian even though he is deprived of a portion of the value of sections 16 and 36. For that reason, Mr. Speaker,

I expect to give my sanction to the bill by voting for it, purely upon the ground, as I said, of the exigencies of the occasion and for the reason that I think the conference committee will undoubtedly see their way clear to reinstate $2.50 an acre instead of $1.25 an acre and thereby keep the plighted faith of the Federal Government with its helpless wards. [Applause.]

I yield back the remainder of my time to the gentleman from Mississippi [Mr. Williams].

Mr. WILLIAMS. Mr. Speaker, I yield five minutes to the gentleman from Virginia [Mr. Saunders].

Mr. SAUNDERS. Mr. Speaker, I can not agree with my colleague on the committee [Mr. Carter], as to the conclusions reached in respect to this bill. I want to bring to the attention of the House the facts in relation to the case as they were developed before our committee.

Now, this is a case in which the Government of the United States has undertaken to pay for 166,000 acres of land for school purposes. It would seem to be a simple proposition that when the Government undertakes to take this land from these Indians, it would pay them a reasonable price for the land taken.

It was developed before our committee that this land is easily worth from $5, to $10 an acre. At a most moderate estimate it may be put at an average of $5 an acre. Then it was further developed before our committee, by the statement of Major McLaughlin, that in substance an agreement was made with the Indians for this purchase.

Now, I do not mean to say that any formal agreement was made, because there was none, but the

circumstances under which Major McLaughlin undertook to say to these Indians that he would recommend that $2.50 should be paid for this land, and that was the specific amount that these Indians were demanding were sufficient to make a contract. When you consider the relations of these contracting parties, the representatives of a powerful Government on the one hand, the helpless Indians on the other, I think it can fairly be said in the light of what passed that there was almost a specific contract that $2.50 should be paid per acre for these lands. It was said in the course of this discussion, that as the United States Government is increasing the value of these lands, therefore it has a right, in substance, to reduce the price of the land that it takes and pays for, from $2.50, to $1.25 an acre.

The House ought to bear in mind that the opening of these reservations is not something that is sought after by the Indians, but something that is pressed upon these Indians by influences operating from the outside. This particular agency has been opened as the result of this pressure, and, that being so, you can not say that the Indians should pay in this indirect way for the benefit of the opening. If we have given any benefit to these lands, as the result of the other things that have been referred to in this debate, then the way for the Indians to get that benefit is by that simple and direct method which was taken in the State of Oklahoma, and that is to put this land up to the highest bidder.

I have never been able to ascertain, Mr. Speaker, why it is, with respect to these and other cases of this

sort that have come before our committee, that a scheme that operates so well in general, a scheme that has operated so well in the State of Oklahoma, a scheme that is per se right, namely, to allow a man to come forward and on his judgment on the land, to make his bid, is not right under any, and all circumstances, under which land is put up to be sold for the benefit of any party?

Mr. HACKNEY. I would like to ask the gentleman if he does not recognize the fact that Oklahoma had been advertised for years, and that the eyes of the whole United States were centered on that land, and they were all on the lookout in making a rush there when the opening came? That would not apply to the other reservation.

Mr. SAUNDERS. Is the gentleman asking the question from the standpoint of the Indians, or of these other people?

Mr. HACKNEY. I am asking it from the standpoint of the Indians.

Mr. SAUNDERS. The answer naturally will be that the Indians, who are the people most interested in this land, and in what this land shall bring, will be only too glad to take the chances of putting the land up to the highest bidder, and ascertaining thereby whether they will get $1.25 an acre, or more for it.

Mr. HACKNEY. Mr. Speaker—

Mr. SAUNDERS. I can not yield further. I have only five minutes, and no time to yield.

Now, I want to say further, that my colleague on the committee [Mr. Carter] says that he does not approve of taking this land from the Indians that is worth $5, or

$10, an acre and paying them $1.25 for it, but under the exigencies of the occasion, he thinks it would be best to vote for the amended bill. Mr. Speaker, there is another way that we can meet the exigencies of this occasion, and an easy way, and that is to do what is the plain, obvious, direct and fair thing with these Indians, namely, when we take land worth $10 an acre, to pay them the agreed sum of $2.50 this being the pitiful sum that they are asking. [Applause.]

These are the facts of the case. Here is the statement of Mr. Commissioner Leupp and of Major McLaughlin, and, I say, now as I said in the beginning, that no one can read this statement without being impressed with the fact that what passed between Major McLaughlin, and the Indians, almost amounts in the highest form, and indeed in final form, to an absolute contract that they should be paid $2.50 an acre for the land.

Mr. WILLIAMS. I yield the gentleman two minutes more. So far as the Indians were concerned they so understood the situation.

Mr. SAUNDERS. They so understood it, and what was stated to them by Major McLaughlin was calculated to impress those people with the idea that the Government would pay them $2.50 per acre, and why should the United States Government not do it?

The Senate bill agrees to pay them $2.50 an acre for the land taken. What are the facts in the case as to its value?

As to the value of the land, it was agreed to in the deal between the Indians and Major McLaughlin. The

Senate bill has done what is the plain and obvious thing for us to do--namely, to give the Indians $2.50 per acre, as agreed. This after all is far below the value of this land.

I submit, Mr. Speaker, that taking all of these things together, no great hardship is going to follow to anyone if the result of our adverse action on this bill is to delay its passage. No mischief is going to result to anyone, as a result of that delay, and that being so, we ought to meet the exigencies of the situation by voting against this bill, and letting it be brought up again, as it can be, in this House, without this amendment being tacked to it. Then we can do what is just for these Indians.

Mr. WILLIAMS. Mr. Speaker, after the argument of the gentleman from Virginia I do not believe the facts of this case, as I understand them, can be stated any plainer to the House. It seems quite clear to me that the amendment ought not to be on the bill, and on account of it the bill ought to fail. Certainly, the gentleman can bring the matter before the House later on under a motion to suspend the rules, without the amendment, and in that way can give to the Indians for the school lands the $2.50 an acre that they understood they were to get from the United States Government, and that they were justified in expecting upon the statement which had been made to them by its agent. I hope the bill will be voted down. [Cries of "Vote"]

OPENING OF CHEYENNE RIVER AND STANDING ROCK RESERVATIONS.

The SPEAKER pro tempore. The question is on suspending the rules, discharging the Committee of the Whole House on the state of the Union from the further consideration of the bill, agreeing to the amendments, and passing the bill.

The question was taken, and the Speaker pro tempore announced that the ayes seemed to have it.

Mr. WILLIAMS. I ask for the yeas and nays.

Mr. SHERMAN. I raise the question of the absence of a quorum.

The SPEAKER pro tempore. Evidently there is not a quorum present. The Doorkeeper will close the doors; the Sergeant-at-Arms will notify absent Members; as many as favor the motion will, when their names are called, answer "yea;" those opposed will answer "nay;" those present and not voting will answer "present," and the Clerk will call the roll.

The question was taken, and there were—yeas 130, nays 79, answered "present" 17, not voting 152, as follows:

42 Cong. Rec. 7018 (Senate, May 27, 1908)

LANDS IN SOUTH DAKOTA AND NORTH DAKOTA.

The VICE-PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 1385) to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect, which were:

On page 3, after line 11, to insert:

Provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians; Provided, however, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other proper authority of any religious organization heretofore engaged in mission or school work on said reservations, for such lands thereon (not included in any town site herein provided for) as have been heretofore set apart to such organization for mission or school purposes.

On page 4, line 6, to strike out all after "reservations" down to and including "act," line 8.

On page 4, line 17, after "disposition," to insert "until further action by Congress."

On page 4, to strike out line 18 down to and including "common," line 20.

On page 5, line 13, to strike out "State of" and insert "States of North or."

On page 5, line 18, to strike out all after "meet" down to and including "shall," line 21, and insert "and."

On page 5, line 23, to strike out all after "assistants" down to and including "of" where it occurs the first time, line 25, and insert "at such compensation as."

On page 5, line 25, after "Interior," to insert "may approve."

On page 6, line 15, after "respectively," to insert "and no compensation shall be paid to either the commissioners or employees after the said six months."

On page 7, line 1, to strike out "promptly."

On page 7, line 21, after "may," to insert "in the discretion of the Secretary of the Interior."

On page 8, line 17, after "North Dakota," to strike out "as" and insert "the sums to which."

On page 8, line 18, to strike out "thereto."

On page 8, line 19, to strike out all after "annum" down to and including "alike," line 21.

On page 8, line 25, to strike out all after "Interior" down to and including "Indians," page 9, line 4.

On page 9, line 9, to strike out "two dollars and fifty" and insert "one dollar and twenty-five."

On page 10, line 1, to strike out "four hundred and fifteen" and insert "not more than two hundred and twenty-five."

On page 10, line 9, after "appropriation" to insert ", or any further appropriation hereafter made for the purpose of carrying out the provisions of this act."

On page 10, line 22, after "received" to insert "and."

Mr. CLAPP. I move that the Senate concur in the amendments of the House of Representatives.

The motion was agreed to.

CONGRESSIONAL DEBATE ON 1910 AMENDMENTS TO 1908 CHEYENNE RIVER ACT

45 Cong. Rec. 504 (Senate, January 11, 1910)

SCHOOL LANDS IN SOUTH DAKOTA AND NORTH DAKOTA

The bill (S. 3286) to amend sections 7 and 8 of the act of May 29, 1908 (35 Stat. L., p. 460), entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

Mr. KEAN. The bill seems to carry an appropriation of a good deal of money, nearly $500,000. I think we ought to have some explanation of it.

Mr. GAMBLE. The act which the bill proposes to amend was introduced in the Senate nearly two years ago, and the price of the school land was fixed by the provisions of the bill at $1.25 an acre. The bill was submitted to the Indians of the Cheyenne River and Standing Rock reservations, and, with some modifications, it was agreed to by those tribes. The Indians, however, insisted that the payment for the school lands should be $2.50 an acre. The bill was so amended. It was so reported by the Committee on Indian Affairs of the Senate, and it passed this body at $2.50 an acre.

The bill went to the House, and a hearing was had before the House Committee on Indian Affairs, and a

report was made amending the bill and providing that the price should be $2 per acre. By some mistake or error or inadvertence in some manner in the preparation of the report—I do not know any other explanation—instead of using the draft of the bill as it passed the Senate, they used the bill as it was originally introduced, wherein the price was named at $1.25 per acre, and it passed the House at $1.25 an acre, when the committee intended that it should be $2 an acre. The bill passed the House in that form, at $1.25, late in the session of Congress.

It is not only a violation of a formal understanding, but of an agreement with both these Indian tribes. We ought to act honorably and justly by these Indians and carry out the understanding originally had with them.

The original act embraced reservations in the two States of North and South Dakota amounting to upwards of 3,000,000 acres, and this bill has relation to about 166,000 acres in both States for the benefit of the common schools.

Mr. SUTHERLAND. Is it not a fact that the lands embraced in this bill are worth very much more than $2.50 an acre, and if it were not for the fact that arrangements had been made with the Indians to the effect to pay them $2.50 we could offer them for even more than $2.50?

Mr. GAMBLE. In reply to the Senator from Utah, I will say that I think that is entirely true, although I do not have knowledge as to the value of these lands or officially as to the price at which they were appraised. The act provided that all the lands should be appraised

separately in 160-acre tracts. My understanding is that the appraisement which has been made is from 50 cents to $6 per acre. The lands are worth very much more than $2.50 an acre. Recognizing the fact that the Government was acting practically as the custodian for the Indians, and as their guardian, it was thought by the committee that $2.50 an acre would be a fair compensation as between the Government and the Indians. I may say that the Indians are entirely satisfied with that price.

Mr. NELSON. Will the Senator from South Dakota yield to me for a minute?

Mr. GAMBLE. Certainly.

Mr. NELSON. As I understand it, this is a bill to give to the States of North and South Dakota certain school lands within Indian reservations and to compensate the Indians for them. Were the reservations existing at the time the Dakotas were admitted into the Union?

Mr. GAMBLE. They were.

Mr. NELSON. My recollection is clear that those lands which were then in Indian reservations were given to the States by the act.

Mr. GAMBLE. My understanding clearly is that the enabling act providing for the admission of North and South Dakota in the Federal Union explicitly provided that sections 16 and 36 within all reservations in the States by the very act itself vested in and were conveyed to the States as soon as the Indian title was extinguished. This has been the uniform rule followed in the opening of all the reservations in both the States of North and South Dakota.

Mr. KEAN. I think the point raised by the Senator from Minnesota is a very important one. I think the bill had better go over.

Mr. GAMBLE. I am very clear, because I have examined the enabling act, and that is the specific provision.

Mr. NELSON. I should like to have the bill go over until I can examine it.

Mr. GAMBLE. That is entirely satisfactory.

The PRESIDENT pro tempore. Objection being made, the bill will be passed over without prejudice.

45 Cong. Rec. 738-40 (Senate, January 18, 1910)

SURPLUS AND UNALLOTTED LANDS IN NORTH AND SOUTH DAKOTA

The next bill on the calendar was the bill (S. 3286) to amend sections 7 and 8 of the act of May 29, 1908 (35 Stat. L., p. 460), entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect."

The Secretary proceeded to read the bill.

Mr. GAMBLE. Mr. President, the bill has already been read and was partially considered the last time the calendar was pending, when the senior Senator from Minnesota [Mr. Nelson] asked to have the bill passed over until he could examine the statute. As I understand, he is now entirely satisfied with it. The bill having already been once read, perhaps it will not be necessary to read it again.

The VICE-PRESIDENT. The bill is before the Senate as in Committee of the Whole and subject to amendment.

Mr. LODGE. Mr. President, undoubtedly there will be discussion about this bill. The last time it came up there was some information promised us as to the law. The Senator from Minnesota raised a question in regard to it.

Mr. NELSON. Mr. President, I have examined the law. When the bill was previously pending I had supposed that lands within Indian reservations were not within the school-land grants of the State of Minnesota, but I found on examining the law that, while the limitation applied to other permanent reservations, it did not apply to Indian reservations. The State, whenever those Indian reservations are opened, is entitled to sections 16 and 36 for schools in each township. This bill proposes to relinquish those lands, and to give the State other lands in lieu of them. The right of the Indian is adjusted and was partially considered the last time the calendar was paid for at the rate of $2.50 an acre [sic]. We are simply buying that land and paying the Indians for it in order that the State can get its school-land grant; in other words, in order that the State may get sections 16 and 36 within the limits of the Indian reservation, we propose to pay the Indians for the land at the rate of $2.50 an acre.

Mr. LODGE. Who gets the money?

Mr. NELSON. It is supposed to go to the Indians. It belongs to the Indians.

Mr. LODGE. Who pays the money—the United States?

Mr. NELSON. I suppose the Government of the United States.

Mr. LODGE. That is, we pay the Indians for the land and then give the land to the State?

Mr. NELSON. Yes.

Mr. LODGE. How much does the bill involve?

Mr. NELSON. I am unable to say. This bill was reported from the Committee on Indian Affairs, and not from the Committee on Public Lands.

Mr. GAMBLE. The bill involves 166,000 acres of land. The enabling act, to which the senior Senator from Minnesota [Mr. Nelson] called the attention of the Senate when this bill was last under consideration, expressly conveys to the State sections 16 and 36 for the benefit of the common schools, and if any of the lands are within Indian reservations, as soon as the Indian title is extinguished, then the title vests in and the lands become the property of the State. It has been the practice of Congress for many years to carry out the provisions of the enabling act and to pay the Indians for such lands, so that they might be conveyed to the State and used for the benefit of the common schools.

Mr. GALLINGER. Mr. President—

Mr. GAMBLE. I will read the section of the enabling act, if the Senator cares to have me do so.

Mr. LODGE. No land was given to the State of South Dakota at the time of the enabling act.

Mr. GAMBLE. There were lands given, and those lands were donated to the State at the same time.

Mr. LODGE. These very lands were given under the enabling act?

Mr. GAMBLE. These very lands—sections 16 and 36—the same as in all the public-land States, were donated to the States, and the grant would become operative as a grant as soon as the Indian title was extinguished.

Mr. LODGE. Do I understanad that the Government of the United States is under obligation to pay four or five hundred thousand dollars to Indians, and then give the lands to the State of South Dakota?

Mr. GAMBLE. The Government certainly is so obligated under the enabling act, and that was the direct proposition.

Mr. LODGE. The provision of the enabling act was for the extinguishment of the Indian title?

Mr. GAMBLE. Yes, sir.

Mr. GALLINGER. Mr. President—

Mr. LODGE. I should like to have that section of the act read.

The VICE-PRESIDENT. Does the Senator from South Dakota yield to the Senator from New Hampshire?

Mr. GAMBLE. Certainly.

Mr. GALLINGER. Mr. President, this is a proposition which involves an expenditure of $415,000. I have heard a great deal about the necessity for economy in governmental appropriations this year, and we have tried to guard the Treasury as well as we could. Now, it seems to me that this matter ought to have more consideration than it possibly can get under Rule VIII, involving so large an amount as it does.

Another observation. A few days ago, when we undertook to get a resolution through here, we were met with the suggestion that it ought not to receive favorable consideration because there was an attorney in the case. I should like to ascertain, if I can, whether or not there is an attorney in this case. I recall the fact that since

I have been a member of the Senate we passed a bill relating to the Indians in which there was an attorney fee of something like $750,000, which was paid to certian lawyers who looked after the matter before Congress. Perhaps the Senator from South Dakota can tell me whether there are any attorneys in this case who are going to divide up this money with the Indians, provided we appropriate it.

Mr. GAMBLE. I can most confidently assure the Senator from New Hampshire that there are no attorneys or attorneys fees, directly or indirectly, connected with this matter. As I stated when this bill was under consideration a few days since, I originally, some two years ago, introduced a bill for the opening of these lands to settlement. The price of the school lands in that bill was fixed at $1.25 an acre. It involved about 3,000,000 acres in the northern part of my State. It has been the custom of the dpeartment to refer these matters to the Indian tribes to see if the propositions contained in the bills would be satisfactory. That was done in this case.

The bill provides for an appraisement of the lands by a commission. These lands, I understand, have been appraised at prices from 50 cents to $6 per acre. The bill was submitted to the Committee on Indian Affairs and had the approval of the department. It passed the Senate, fixing the price to be paid for the land at $2.50 an acre. It went to the House, and by some mistake or misapprehension—and I think the mistake grew out of using the original bill which I introduced providing for payment at the rate of $1.25 an acre—it was reported from the

Committee on Indian Affairs in the House with an appropriation at the rate of $2 an acre; but by a misapprehension it passed the House at $1.25, and afterwards was agreed to in conference.

The department felt that as this matter had been referred to the Indians of the Cheyenne River and Standing Rock reservations and a pledge as nearly as could be was honorably made to them, that a fair price should be paid, which was fixed at $2.50 an acre. They so understood it, and Congress ought to meet that requirement.

This bill was prepared by the department, and not by any attorney. It is an honorable effort to carry out what was the original fair understanding had with these Indian tribes. It is to correct an error, to make right a wrong, and to do justice to these Indian tribes.

I will not take the time of the Senate to discuss the proposition in regard to the provisions of the enabling act. The pending bill adheres to the practice that has been followed in the opening of the reservations not only in South Dakota, but in North Dakota; and this has been the interpretation placed upon it by Congress and by the department.

Mr. GALLINGER obtained the floor.

Mr. STONE. If the Senator from South Dakota will permit me to interrupt him, I should like to ask from what committee this bill comes?

Mr. GAMBLE. This bill came from the Committee on Indian Affairs.

Mr. STONE. Mr. President, before the Senator finally concludes this little running debate, I should like

to have read the statute to which he has referred. It is a very remarkable one.

Mr. GAMBLE. I will read it.

The VICE-PRESIDENT. The Senator from New Hampshire [Mr. Gallinger] has been recognized, and is entitled to the floor. Does the Senator yield?

Mr. GALLINGER. I will make a single observation, and then yield the floor. I notice in the report a letter from the late Secretary of the Interior, who seems to approve of this grant, and yet there is one observation here that is worthy of consideration. The Secretary says:

> I have been unable to determine just when or by whom the amendment to this original bill was proposed suggesting the substitution of $1.25 per acre for $2.50, as originally provided, and the appropriation of $225,000 instead of $415,000 to pay for the lands so granted.

It seems to me, from that suggestion of the late Secretary of the Interior, that there is some doubt as to how the price for these lands was fixed, and I think it ought to be looked into.

Mr. President, I know very little about this matter; but a very large amount is involved in the bill; and after the Senator from South Dakota puts in the RECORD the statute, I propose to object to the further consideration of the bill under Rule VIII, and ask that it go over under Rule IX.

Mr. SUTHERLAND. Mr. President—

The VICE-PRESIDENT. The Senator from New Hampshire objects to the further consideration of the bill, except that he limits his objection so as to permit the Senator from South Dakota to read the statute.

Mr. SUTHERLAND. I want to ask the Senator from New Hampshire a question, if he will permit me.

The VICE-PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Utah?

Mr. GALLINGER. Certainly.

Mr. SUTHERLAND. I understood the Senator from New Hampshire to say that the Secretary of the Interior had suggested a query in his communication as to why the price of these lands had been doubled. My understanding is that the query was exactly the other way, and was as to why the amount to be appropriated had been decreased.

Mr. GALLINGER. The Senator is right on that point. I misinterpreted the suggestion of the Secretary. The Secretary of the Interior raised a question as to why the amount had been decreased rather than increased, but, nevertheless, the larger amount is in the bill we are considering.

Mr. GAMBLE. Mr. President, I call attention to section 10 of the enabling act providing for the admission into the Union of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, which reads:

SEC. 10. That upon the admission of each of said States into the Union sections Nos. 16 and 36 in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the

approval of the Secretary of the Interior: Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

By the very act itself, Mr. President, the lands become a part of the public domain, and the original grant to the States at that time becomes operative.

Mr. LODGE. Mr. President, I do not wish to delay the bill going over. I merely wish to say, as I asked for the reading of the section of the statute, that it does not in the slightest degree bind the United States to buy the lands and extinguish the title of the Indians on these Indian reservations.

Mr. GAMBLE. Mr. President, on a proper interpretation of the section it certainly does bind the Government.

Mr. LODGE. I am only interpreting the act as I heard it read.

Mr. GAMBLE. It donates affirmatively sections 16 and 36, and then pledges the faith of the Government that when the Indian title becomes extinguished the grant will become operative. It has been the uniform practice of the Government throughout its history in the public-land States to grant these lands, but in later years, as the land has appreciated in value, of course the price and the amount we pay has been increased.

Mr. FRYE. I understand a Senator is entitled to speak once, and then for only five minutes, when considering the calendar under Rule VIII.

Mr. GAMBLE. Perhaps I am occupying too much time, and I apologize to the Senate.

Mr. DAVIS. I should like to ask the Senator from South Dakota a question.

The PRESIDING OFFICER (Mr. Kean in the chair). Does the Senator from South Dakota yield to the Senator from Arkansas?

Mr. GAMBLE. Certainly.

Mr. DAVIS. I am a member of the Committee on Indian Affairs, Mr. President. This bill was referred to that committee. It was introduced by the Senator from South Dakota [Mr. Gamble], and by that committee was referred to the Senator himself as a subcommittee. The Senator brought the bill before the committee, and insisted upon it being reported out the same morning.

Mr. GAMBLE. Mr. President, I desire to correct the Senator from Arkansas. This bill was a department bill, which had been introduced by the junior Senator from Minnesota [Mr. Clapp], the chairman of the Committee on Indian Affairs, during the last Congress. It was reported from the Committee on Indian Affairs by the junior Senator from Utah [Mr. Sutherland] in the Senate a year ago.

Mr. DAVIS. If the Senator will permit me—

Mr. GAMBLE. The Senator will permit me an additional word. Then, during the present session, this bill having been favorably reported heretofore, it was

reported at the first meeting of the Committee on Indian Affairs. The bills to which the Senator from Arkansas refers, or the ones he now has in mind, are two other bills on which reports were directed to be made at the last sitting of the Committee on Indian Affairs of the Senate.

Mr. DAVIS. Be that as it may, Mr. President, the Senator from South Dakota insisted in the committee upon an immediate report of this bill. I objected to the terms of the bill at the meeting of the committee, and it was expressly understood between the Senator from South Dakota and myself that he would satisfy me about this bill before he reported it to the Senate. I have had no conference with the Senator from South Dakota about it. I should like to have read that provision of the bill which relates to the disposition of the school lands.

Mr. GAMBLE. Of course I do not want to detain the Senate unduly in the consideratin of this bill, but with the utmost courtesy, I want to say in reply to the Senator from Arkansas that he is entirely mistaken. As I clearly recall, this bill was authorized to be reported when the Senator from Arkansas was not present. I may be in error as to that, but it was a unanimous report.

Mr. DAVIS. This bill was reported from the Committee on Indian Affairs at its last meeting on last Thursday, when it was distinctly understood that the Senator from South Dakota should satisfy me about the bill before it was reported to the Senate.

Mr. GAMBLE. I desire to correct the Senator —

The PRESIDING OFFICER. The debate is proceeding by unanimous consent.

Mr. GAMBLE. I will ask unanimous consent to make the statement that the Senator from Arkansas—and I say it with the utmost respect—is entirely mistaken. He is referring to a matter that occurred in the committee at its last session. This bill was reported on January 6, 1910. The conversation to which he refers applies entirely to other bills, and not to this bill.

Mr. SUTHERLAND. Mr. President, if I may be indulged a moment, the Senator from Arkansas [Mr. Davis] is mistaken in his statement. As I recall the facts, he evidently has reference to some other bill. I do not know just how far we ought to discuss the proceedings in committee here, but the fact is that when this bill was authorized to be reported, I remember very distinctly that the Senator from Arkansas was not present. The matter was called up before the Committee and the Senator from South Dakota was authorized to report on the bill without discussion, because identically the same bill had been authorized to be reported by the committee at the preceding Congress, had been reported, and, as I recall, had been passed by the Senate. It then went to the House of Representatives, and the House amended the bill by fixing the smaller amount. It is only because of those circumstances that the bill is brought back again.

Mr. DAVIS. Mr. President, on referring to the calender, I find that I am mistaken.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. Gallinger] has objected to the further

consideration of the bill, and it goes to the calender under Rule IX.

Mr. GALLINGER. Before the bill goes over I desire to have read a proposed amendment, which I shall offer to the bill when it is again up for consideration.

The PRESIDING OFFICER. Without objection, the Secretary will read the proposed amendment.

The SECRETARY. Add at the end of the bill:

Provided, that no part of the appropriation herein made shall be allowed for fees or compensation of any kind to attorneys or agents.

Mr. GAMBLE. I will accept the amendment, and I trust that, as the bill is a matter of importance, the Senator from New Hampshire will withdraw his objection.

Mr. GALLINGER. I must insist that the bill go over.

The PRESIDING OFFICER. The Senator from New Hampshire adheres to his objection, and the bill goes over.

Mr. GAMBLE. I have no objection whatever to the proposed amendment.

45 Cong. Rec. 1043-1049 (House, January 26, 1910

SALE AND DISPOSITION OF INDIAN LANDS IN NORTH DAKOTA AND SOUTH DAKOTA

The Committee on Indian Affairs was called.

Mr. BURKE of South Dakota. Mr. Speaker, by direction of the Committee on Indian Affairs, I call up the bill (H.R. 12438) to amend sections 7 and 8 of the act of May 20, 1908, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian Reservations, in the states of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect."

The SPEAKER. Under the rule, the committee will resolve itself into Committee of the Whole House on the state of the Union.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. PERKINS in the chair.

The CHAIRMAN. The House is now in Committee of the Whole House on the state of the Union for the consideration of the bill which the Clerk will report.

Mr. BURKE of South Dakota. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent that the first reading of the bill be dispensed with. Is there objection?

There was no objection.

Mr. BURKE of South Dakota. Mr. Chairman, the purpose of this bill is to pay to the Indians belonging to the Cheyenne and Standing Rock tribes in my state and in North Dakota $1.25 an acre for about 150,000 acres of land, being land that was ceded to the State as school lands under a bill that passed in the first session of the Sixtieth Congress. That bill provided that sections 16 and 36 should be ceded to the State for school purposes, and as it became a law it provided that the Government should pay only $1.25 an acre therefor.

The purpose, as already stated in this bill, is to pay $1.25 an acre additional to the $1.25 that has already been paid. I may say, going back to 1907, that a bill was introduced in this House authorizing the sale of a certain portion of the Cheyenne and Standing Rock Indian reservations in my State, providing that sections 16 and 36 should be ceded to the State for school purposes, and providing that there should be paid for the school sections $1.25 an acre.

The Commissioner of Indian Affairs, by letter transmitted through the Secretary of the Interior, requested that there be no action upon that bill until there had been some negotiations with the Indians occupying these reservations. Major McLaughlin, an inspector in the Indian service, a man who has had thirty-eight years experience in dealing with the Indians, was sent to the reservation with the bill which I have referred to.

He took up the different provisions of this bill, held a number of councils with the Indians, agreed with

them as to the provisions in the bill, except that they demanded $2.50 an acre for sections 16 and 36, instead of $1.25, as proposed in the bill.

Mr. McLaughlin promised the Indians that he would recommend that the price of these lands be fixed at $2.50 an acre. He made his report, and upon the filing of that report in the Interior Department the Secretary of the Interior transmitted to Congress a communication in which he called attention to the report of Major McLaughlin, sent a copy of it to the Committee on Indian Affairs in the Senate, and called particular attention to the fact that there was an understanding that the price of the school section was to be $2.50 an acre, instead of $1.25 an acre.

The Senate committee, in considering the bill in the Senate, which had been introduced with the $1.25 price, the same as in the House, amended the bill, fixing the price at $2.50 an acre, and the bill passed the Senate in that form. It came over to the House and was referred to the Committee on Indian Affairs by the committee having jurisdiction thereof.

Now, Mr. Chairman, there is some question about what happened after this bill was referred to the Committee on Indian Affairs and after it was reported and when it passed the House. I did not happen at that time to be a member of either the Committee on Indian Affairs or of the House, so I am obliged to speak by what I find in the RECORD and what I can learn from Members who were upon the committee at that time.

I find and I hold in my hand a copy of the report made upon the bill H.R. 1385, first session of the Sixtieth Congress, and I find by that report that the bill fixed the price of school lands at $2.50 an acre and was amended by striking out 50 cents and leaving the price $2 instead of $2.50 an acre.

I call attention further to the report where it states an appropriation is made to pay the Indians for these lands, namely, the school sections at $2 per acre. The report says:

> Sections 16 and 36 are reserved as school lands for the States of North Dakota and South Dakota, which is in accordance with the Enabling Acts of these States. An appropriation is made to pay the Indians for these lands at the rate of $2.00 per acre.

That, Mr. Chairman, is the report of the Committee on Indian Affairs.

I now find in the RECORD that on May 26, 1908, Mr. Sherman, the then chairman of the committee, moved to suspend the rules and pass the bill, and as the bill is printed in the RECORD it appears that the price of these lands was $1.25 an acre instead of $2 an acre as it should have been, according to the report made by the committee. When the price from $2 to $1.25 an acre was changed I do not know, and I have been unable to obtain any information that it ever was changed, except that in calling up the bill they must have gotten hold of the bill as originally introduced, which provided a price, as I have already stated, of $1.25 an acre.

Mr. MANN. Will the gentleman yield?

Mr. BURKE of South Dakota. Certainly.

Mr. MANN. Why, the bill that was called up was a Senate bill, and the Senate bill that is called up is the engrossed bill coming from the Senate. There is no such possibility as the gentleman suggests.

Mr. BURKE of South Dakota. I can only say that the RECORD shows that the price was $1.25 an acre, as the bill was printed. I have in my hand a report of the Committee on Indian Affairs—

Mr. MANN. So have I.

Mr. BURKE of South Dakota. Which fixed the price at $2 per acre.

Mr. MANN. I will give the gentleman the information as to how it got changed. He has not been able to discover it.

Mr. BURKE of South Dakota. I thought I stated very fairly that I did not know how it had occurred. I have no doubt that I did not know how it had occurred. I have no doubt that my genial friend from Illinois, when he gets an opportunity in his own time, will be able to tell the House exactly where and how that change took place. I am unable to do so; but I find, Mr. Chairman, that when this bill was considered in the House members of the Committee on Indian Affairs protested against its passage because it proposed to pay only $1.25 to the Indians instead of $2.50 an acre.

The bill was considered under a suspension of the ;rules, and it wuld have been impossible to amend it, and it was either a question of defeating it or passing it in the form in which it was presented and trusting to the conferees to make the change to the price of $2.50. I

find that the gentleman from Oklahoma [Mr. CARTER] in his remarks said that he would support the bill only because he had confidence in the conferees that they would do justice to these Indians and change the price to $2.50 an acre, as passed by the Senate and in accordance with the agreement that had been made with these Indians. I find that the gentleman from Virginia [Mr. SAUNDERS], a member of the committee, refused to support the bill because of the fact that it did not carry out the agreement made with the Indians, and he and others of his collegues, especially on that side of the House, voted against the passage of the bill because, as he stated, it was doing an injustice to these Indians.

Mr. STEPHENS of Texas. Will the gentleman yield?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. I desire to ask how long before this bill passed was it that this agreement had been made.

Mr. BURKE of South Dakota. Just a few months, I could not say just how long it was.

Mr. STEPHENS of Texas. This is the same bill that we have the statement of Major McLaughlin upon, to the effect that the Indians agreed to take $2.50?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. And that they stood by that still?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. And demanded that the Government should be fair with th and carry out that agreement.

Mr. BURKE of South Dakota. They insisted that they be paid $2.50 an acre, and Major McLaughlin promised, just as much as he could promise, that they would receive $2.50 an acre if the bill was enacted into law.

Mr. STEPHENS of Texas. Was he an agent of the Government sent there for the purpose of making this treaty with them?

Mr. BURKE of South Dakota. That was the purpose, and it was in accordance with article 12 of the agreement made with the Indians in 1889 that further disposition of their reservations should be made after negotiations with some representative of the Interior Department, and the Secretary of the Interior was authorized to appoint a person to so negotiate.

Mr. STEPHENS of Texas. Then, is it not a fact that we are bound as far as we can be bound by that treaty with the Indians to pay them $2.50 an acre?

Mr. BURKE of South Dakota. My judgment is that we are, or I would not be advocating the passage of this bill.

I want to call attention, Mr. Chairman and Members of this House, to one paragraph in the report made by the commission which negotiated the treaty of 1889 with the Sioux Indians in South and North Dakota. After commenting on the manner in which the Government had treated with Indians theretofore, and perhaps suggesting that the Government had not always ketp faith with them, the commission made this suggestion:

The Indians of this generation should be made to feel that the performance of the Nation is equal to its promises.

Now, Mr. Chairman all I am here for at this time is to demand that the Government keep its promise with these Indians and pay to them the price for the land that we agreed to pay through our representative who was sent there to negotiate with them under authority of law. Mr. Chairman, I want to call attention for a moment to another thing that perhaps will be new to the Members of this House. The agreement made with the Sioux Indians in 1889 provided that the proceeds from the sale of the surplus and unused lands when sold should be paid into the Treasury of the United States to the credit of the Indians and thereafter be subject to appropriations by Congress for their civilization, education, and support, so that the moneys that these Indians receive from the sales of the lands authorized to be sold under the act we now propose to amend will not receive any benefit except that they will be supported thereafter from the funds that go into the Treasury from the sale of the lands, instead of being supported under the provisions of the treaty of 1877, which obligates the Government for all time to provide for them until they are self-supporting.

And, I will say in the Indian appropriation bill, which is now upon the calender of this House, that the committee reduced the appropriation for the support of the Sioux Indians, and particularly the Indians affected by the pending bill, to the extent of $150,000 and provides that that amount should be appropriated from the money

belonging to these Indians in the Treasury instead of taking it out of the public funds belonging to the United States. So that if we pass this bill we will put into the Treasury to the credit of the Indians somewhere near $200,000, and next year we will take it out for their care, their support and their education, and if we do not put this money into the Treasury to their credit we will take money out of the public funds for their care and support. Therefore we practically accomplish nothing so far as the Indian is concerned, except that we keep the solemn promise and obligation made by the Government when the Indians consented that the surplus and unallotted lands described in the act which was passed, to which I referred in the opening part of my remarks, might be sold and disposed of. Now, it seems to me, Mr. Chairman, that no man can object to the passage of this bill, and let us from this time forth declare and let the Indians understand that when we make an agreement with them we are going to keep it by carrying out to the letter what we promised to do. I reserve the balance of my time.

Mr. SABATH. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. SABATH. Have these lands been disposed of?

Mr. BURKE of South Dakota. The lands have not been disposed of. Under the terms of the law the Indian first had to be allotted.

Mr. SABATH. Yes.

Mr. BURKE of South Dakota. After the allotments were completed then the lands had to be examined by

the Geological Survey, to ascertain whether or not there was any mineral land to be affected. Then a commission was to be appointed, consisting of one resident from South Dakota, one Indian having tribal relations with the tribe, and one representative from the Interior Department, to appriase the lands and fix the price at which they should be disposed of to the settlers under the provisions of the homestead law. That commission has completed its work and its report is on file, and the present intention is that on the 1st of April, if the time is not extended until the 1st of May, these lands will be open to settlement to homestead settlers.

Mr. SABATH. So these lands have not as yet been opened for homestead settlement?

Mr. BURKE of South Dakota. They are not as yet subject to homestead entry.

Mr. SABATH. But I understood the gentleman to state the report of the commission is now ready to publish.

Mr. BURKE of South Dakota. It is not published, Mr. Chairman, although I know what it contains, so far as the value of the lands is concerned, if that is what the gentleman refers to. The price of the land, I understand, is from $6 an acre down to 50 cents.

Mr. SABATH. I was not interested in the price; I was interested in the disposal of the lands—how they were to be disposed of.

Mr. BURKE of South Dakota. Under the homestead law, by what is known as the registering—

Mr. SABATH. Under the same old process.

Mr. BURKE of South Dakota. The same process that is commonly referred to as a lottery, but is not, in fact, a lottery.

Mr. SABATH. That is the information I desired. I expect, when the time presents itself, to try to amend the law under which these lands have been disposed of.

Mr. BURKE of South Dakota. I reserve the balance of my time.

Mr. MANN. Mr. Chairman, it is not my intention to take very much of the time of the House, but this is one of those very peculiar cases which I think ought to be brought to the attention of the House. My friend from Minnesota suggests that the Government ought to keep an agreement with the Indians. Very well, but the Indians ought to keep an agreement with us. Now, what are the facts in this case? On December 9, 1907, one of the Senators from South Dakota introduced the bill (S. 1385) in the Sixtieth Congress for the purpose of allotting lands in this Indian reservation, and so forht, and, among other things, for the purpose of setting aside sections 16 and 36 in each township, to be paid for by the United States at $1.25 per acre.

That was the original motion of the gentleman representing the great State of South Dakota, who introduced the bill which finally became a law. For years it has been the policy of our Government to give certain sections of the public lands to the States for school purposes, and although originally the public land, or much of it, was sold under the various laws and the ownership of it was considered as an asset of the Government, under

the recent practice of the United States the ownership of the public lands is not only not an asset, but a distinct liability, because we not only give away the land which we do not give to the States, but in the case of the Indian lands, we buy from the Indians in order to give it to the States.

This bill was amended when it was reported into the Senate, so as to make its price $2.50 an acre, and all of the facts in reference to an Indian agent or an agent of the Indian Office who visited these Indians were known and laid before Congress. It passed the Senate with the provision for $2.50 per acre that the Government should pay to the Indians for these lands to present to the States of North and South Dakota. It came to the House at $2.50 an acre.

The Committee on Indian Affairs considered the matter and reported the bill back to the House, providing the striking out of the $2.50 an acre and inserting $2 an acre. The matter pended before the House some time on the Union Calendar. The gentleman from South Dakota [Mr. BURKE], and some other distinguished gentleman who has spoken elsewhere, has stated that they could not find out, or did not know, how the bill finally passed at $1.25 an acre; that it was stated in another distinguished body, not far distant, that it was by an accident that nobody could discover. If Congress gets to the point that it accidentaly strikes out $2.50 an acre for the land it has to pay for and accidentally puts in $1.25 an acre, it is time we discovered those accidents.

What, though, are the facts? The distinguished gentleman who now presides over the Senate of the United States was the chairman of that distinguished committee, the Committee on Indian Affairs. This matter was discussed among the Members of the House, as to whether it should be the policy of the Government in opening Indian reservations and giving two sections in a township to the States, to pay more for this land than had been the custom in the past. As I recall, there never has been a case where the Government has paid more than the $1.25 an acre. If so, this land is worth more. Very well. Who made it worth more? Was it the Indians who have raised the value of this land from $1.25 an acre to $6 an acre, as the gentleman from South Dakota [Mr. BURKE] says it is now worth? Is it not doing pretty well by the Indians if we make the settlers pay to them the increase in the value of the land which the white settlers have made, and not a cent's worth due to thework of the Indians themselves?

Mr. BURKE. of South Dakota. Will the gentleman yield for a question?

Mr. MANN. I always yield.

Mr. BURKE of South Dakota. Did I understand the gentleman to say that prior to the time when the bill referred to passed that $1.25 an acre was the ;highest price that had been paid to the Indians for these lands that were ceded to the States?

Mr. MANN. Well, I do not know whether the gentleman so understood me or not.

Mr. BURKE of South Dakota. Well, I wanted to see, if I did so understand, why he makes the statement.

Mr. MANN. I am perfectly willing for the gentleman to make a speech.

Mr. BURKE of South Dakota. I wish to say this, because I know the gentleman wants to be fair and does not want to mislead the House.

Mr. MANN. Cut that out, as everybody knows that.

Mr. BURKE of South Dakota. I want to say in two propositions similar to this in my State prior to the time this bill was considered, Congress paid $2.50 an acre to the Indians for sections 16 and 36.

Mr. MANN. Well, very likely. It has been the practice of the Government to pay $1.25, and I can readily see why the evil effects of the precedent that has crept in sometimes of paying more than that, should thereby encourage gentlemen in making more of an effort to open the Treasury. Now, the gentlemen had all these facts before them when this bill was up. A distinguished gentleman, now the Vice-President, who has as much knowledge of Indian affairs as any man in this country, and a very careful protector of the Indians' interests in these lands, proposed in this House to make this rate $1.25 an acre. There was no mistake about it, there was no question about it. Some gentlemen then on the committee opposed the proposition on the floor of the House, for the reason that this amount was cut down; but the House, with a full understanding of the subject, determined itself to make the rate $1.25 an acre.

The Senate accepted that. In every essential particular that was a contract between the House and the Indians and the people who are interested in having this reservation opened, that this provision should remain in the bill; and yet the moment when they have secured the enactment of legislation permitting them to open this reservation, on terms such as they seek, they want to come in here and open up a part of the bill which is greatly to their interests without offering to open those poarts which are contrary, in my opinion, to the interest of the public. [Applause]

Mr. BURKE of South Dakota. I desire to ask one further question.

Mr. MANN. I always yield to the gentleman.

Mr. BURKE of South Dakota. The report upon this bill, as I have stated, and as the gentleman from Illinois states, shows that the price fixed by the committee was $2 an acre.

Mr. MANN. Wait a moment; but the committee does not fix the price. The price, as recommended by the committee, was at $2 an acre.

Mr. BURKE of South Dakota. Very well. Can the gentleman tell us when the proposition was changed or fixed at $1.25, and by whose authority it was done?

Mr. MANN. Why, certainly, I will tell the gentleman. I have already told the House. When the gentleman gives me attention, I will tell him again.

Mr. BURKE of South Dakota. I will ask the gentleman if the bill was not passed under a suspension of the rules, and Members on the floor made the statement

that they voted for it believing that the conferees would do justice to the Indians and agree to the price as fixed by the Senate?

Mr. MANN. Oh, well, I do not know what every Member on the floor might have said, or what he believed. If he believed such a conversation would change the action of the House, why, he ought to be seeking a home at an asylum.

Now, the bill was presented to the House. It was before the House, and the gentleman from New York [Mr. Sherman] moved to suspend the rules and pass the bill with an amendment which he offered. The bill was read with this amendment. When this amendment was presented the House was not graced with the presence of the gentleman from South Dakota, much to my personal regret; but I remember the presentation of the bill as distinctly as if it were yesterday.

Mr. BURKE of South Dakota. I observe from the RECORD that the gentleman was in the House, as he usually is when there is any business being transacted; but the gentleman has not yet said how this amendment got in this bill.

Mr. MANN. I have said it seven or eight times, and am ready to say it again, if the gentleman will permit me.

The gentleman from New York [Mr. Sherman], chairman of the Committee on Indian Affairs, moved to suspend the rules and pass the bill with the amendments which he sent up, and one of those amendments was the

amendment changing the rate from $2.50 an acre to $1.25 an acre. Does not that answer the gentleman's question?

Mr. BURKE of South Dakota. No; it does not. The chairman of the committee was supposed to report the bill to the House as directed by his committee.

Mr. MANN. Why, the gentleman from South Dakota certainly has been on this floor long enough to know that even in moving to suspend the rules or call up a bill the chairman in charge of the bill offers an amendment which the committee has not recommended. I have just offered four in that shape, and had them adopted by the House this afternoon on bills which passed.

It is not an uncommon thing. Gentlemen frequently do it. The truth is, that bill never could have passed the House except for the change that was made, and the gentleman from New York [Mr. Sherman], then chairman of the Committee on Indian Affairs, himself believed that the change ought to be made, and so stated.

Mr. BURKE of South Dakota. If he so stated, he did not state it in the presence of this House, or at least it does not appear in the RECORD, which I have before me. At least, I have not found it.

Mr. MANN. I will not undertake to remember what the gentleman stated on the floor of the House, but I know he made that statement, and he will make that statement now, I think, if the gentleman will go to him.

Mr. BURKE of South Dakota. I can not yet see what right he would have to submit any amendment, except as reported by the committee.

Mr. MANN. It is very peculiar that the gentleman can not get that particular parliamentary propositon into his mind. It certainly is not only a common practice, but it is a legitimate practice. It is the proper thing to do. The gentleman from New York [Mr. Sherman] never betrayed any power which he had in the House. He never betrayed the committee which he reprsented on the floor of the House. The gentleman from South Dakota [Mr. Burke] would indicate that the gentleman from New York [Mr. Sherman], the present Vice-President of the United States, offered a motion on the floor of the House which he had no moral right to make. That is preposterous. He offered the amendment. It was agreed to by the House. It became the law; but the moment they had opened this Indian reservation under this provision of the law, these gentlemen come in and say we ought to raise the price. Both they and the Senate were mighty willing to take the law with the change which was made by the House. They were much more anxious to obtain the law and the other provisions in it than they were to stand on this particular provision. But having secured the benefits resulting from the balance of the act, they are now trying to renege on this particular proposition. I am against it. I think when a fair proposition is made everybody ought to stand by it.

Mr. CRUMPACKER. Does the gentleman remember whether the Senate agreed to the House amendment or whether the bill went to conference?

Mr. MANN. The Senate agreed to the House amendment, as I remember.

Mr. STEPHENS of Texas. Is it not a fact that the reason why these Indians should have $2.50 an acre instead of $1.25 an acre is on account of the agreement made with the United States Government that they should have $2.50 an acre?

Mr. MANN. Absolutely no such agreement was ever entered into, nor was anybody empowered to make such an agreement. Does the gentleman from Texas undertake to say that an Indian agent can go out to an Indian tribe and make an agreement which is binding, where the law requires that Congress shall act? Do I understand that a subordinate in the Indian Office, in the opinion of the gentleman, can go out and make an agreement as to the amount of money that Congress shall pay for land? I never have heard such a preposterous proposition seriously put forward before in the House.

Mr. STEPHENS of Texas. That has been the practice for years.

Mr. MANN. I beg the gentleman's pardon.

Mr. STEPHENS of Texas. The Indians agreed that they would permit the lands to be sold at a stated price, and we would be violating the faith of the Government with those Indians by taking the lands from them unless we pay them that amount.

Mr. DOUGLAS. They do not have to take $1.25 an acre, do they, unless they want to?

Mr. STEPHENS of Texas. Should we not keep a promise made to the Indians as faithfully as a promise made by the Government of the United States to one of its own citizens?

Mr. MANN. There has been no promise made. Why does the gentleman keep stating that?

Mr. STEPHENS of Texas. Then the agent of the Government, Major McLaughlin, is directly contradicted by the gentleman from Illinois.

Mr. MANN. I say the gentleman is mistaken about that.

Mr. STEPHENS of Texas. I always prefer to believe the gentleman from Illinois on questions concerning which he is posted, but he certainly does not know what contracts Major McLaughlin made with these Indians.

Mr. MANN. I know as much about it as the gentleman from Texas does. We both get our information from the same source. I have read the statement. I wonder if the gentleman from Texas has. I doubt it.

Mr. BURKE of South Dakota. Will the gentleman from Illinois allow me to enlighten him?

Mr. MANN. Certainly.

Mr. BURKE of South Dakota. Section 12 of the agreement made with the Sioux Indians in 1889, dividing the Sioux Reservation into separate reservations and providing for the allotting of lands to the Indians, contains these words:

That any time after land has been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such tribe for the purchase and lease by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall from time to time consent to sell on such terms and conditions as shall be considered just and equitable

between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress.

Mr. MANN. Is that the law now?

Mr. BURKE of South Dakota. That is the law.

Mr. MANN. Then, what do you come here for? If they have the power now in the department to purchase the land at such price as they agree upon, what is the gentleman doing here?

Mr. BURKE of South Dakota. But it must be ratified by Congress. Now, the gentleman asked a moment ago by what authority Colonel McLaughlin was out there.

Mr. MANN. I beg the gentleman's pardon. I said nothing of the kind. The trouble with the gentleman is that he has been talking with somebody else and was not listening to what I said.

Mr. BURKE of South Dakota. I heard what the gentleman said.

Mr. MANN. What I said was that Colonel McLaughlin, if that is his title, had no authority to make an agreement with the Indians binding on the United States. Does the gentleman from South Dakota contend that he had the authority?

Mr. BURKE of South Dakota. Not unless it was ratified by Congress.

Mr. MANN. Had he the authority?

Mr. BURKE of South Dakota. He certainly had the authority to negotiate.

Mr. MANN. To make an agreement? If this man had authority to make an agreement, the gentleman from South Dakota would not be here with this bill. All that

he was authorized to do was to tell them what he would endeavor to do. No negotiator had the authority to make an agreement binding on the United States, and they well understood it, because they made no binding agreement, and did not pretend to.

Mr. BURKE of South Dakota. They did, subject to its ratification by Congress.

Mr. MANN. They recommended to Congress. There is no question of fact between the gentleman from South Dakota and myself. The Indian agent recommended to Congress the payment of $2.50 an acre. He told the Indians that he would recommend the payment of $2.50 an acre, and that is all he did. That recommendation was laid before Congress. It may be that Congress has no authority, moral or legal, to override the opinion of this Indian inspector, but somehow or some way it did do it, and with all these opinions before Congress, Congress did not choose to follow the recommendation of the Indian agent as to this price and provided otherwise under the lead of the present Vice-President of the United States.

Mr. BURKE of South Dakota. Does the gentleman from Illinois wish to be understood as saying that the Government ought to disregard these negotiations, which practically amount to an agreement, for the sake of saving $1.25 an acre on a small area of land, where the proceeds are going to be used for the support and civilization of the Indians?

Mr. MANN. That question reminds me of the question that is sometimes put to an expert witness. It is so long I forgot what the first of it was before the

gentleman finished. But I will say to the gentleman, of course we do regard any statement that the Indian agents make. We have regarded it and considered it; we have given it all the force it is entitled to, and we have overruled it by the legislation which we enacted, as we had a right to enact.

Now the gentleman wants Congress to overrule itself, on the ground that it did not know what it was doing when it disregarded the opinion of the Indian agent. Do I understand that the gentleman appeals from Congress to the Indian agent? That is a new supreme court—appealing from the action of the House to the opinion of a subordinate officer in the Indian department.

Mr. STEPHENS of Texas. Will the gentleman answer a question?

Mr. MANN. I will yield to the gentleman.

Mr. STEPHENS of Texas. The two contracting parties are the Indian tribes and the United States Government. Is not that true?

Mr. MANN. I am not on cross-examination, and the gentleman can make his own statement.

Mr. STEPHENS of Texas. That being true, then, the minds of the two parties must have met to make a contract. The Indians never agreed to take less than $2.50 an acre, and what right has Congress to say that they shall take $1.25 an acre? Shall we exercise the right of the giant and pay these Indians less than half they agreed to sell for, when they have never agreed to take less than $2.50? Let us be fair and just to the Indians.

Mr. MANN. Oh, the gentleman always ends his speech with that. I do not care whether the Indians take this $1.25 or not. I am perfectly willing that they should continue to keep this land; but bring this whole proposition in before the House again, and not bring in a part of it. It is an effort to amend a particular section of a bill, because it happens that that opens the door of the Treasury and is against the Government, without amending any of the sections of the bill which might be so amended as to protect the Government; that I protest against. The gentleman himself does not wish to repeal the other sections of the act and neither do the Indians. They would far rather have that act stand as it is without an amendment than to have it repealed.

Mr. McGUIRE of Oklahoma. Will the gentleman permit another question?

Mr. MANN. Oh, I am good-natured and am willing to yield all the time.

Mr. McGUIRE of Oklahoma. The gentleman stated in the outset that the Government would keep its agreement, but the Indians should also keep their agreement. Will the gentleman advise the House where these Indians have not kept their agreement with the Government?

Mr. MANN. If the Indians accepted this act—and I understand they have accepted it and appointed a commission under it—

Mr. McGUIRE of Oklahoma. They had no alternative.

Mr. MANN. They had no alternative? Ah, ha, that is another proposition. If they have accepted the act, as they have, then they ought to keep the agreement in the act, and not attempt to break that part of it which does not happen to suit them. Let it stand as a whole or fall as a whole.

Mr. SAUNDERS. Mr. Chairman, I dislike to occupy the time of the House again this afternoon, but this is a matter that comes from the committee of which I am a member, and I am entirely familiar with it. This is a very simple question. It is a mere question of the application of the ordinary principles of good faith to a contract. That is all, nothing more and nothing less. We made an agreement with these Indians so far as we can make an agreement with an Indian tribe. Now, the gentleman from Illinois [Mr. Mann] in one respect is technically correct. No agreement, however solemn, can be made with the Indians with respect to which we have not reserved to ourselves the high prerogative of overruling it, that is, breaking it. To that extent he is right. But in this instance we went ahead, and made an agreement with these Indians, which they recognized as affording the terms upon which they parted with their land. They dealt with a representative of this Government, and they thought that as a consideration for what they were surrendering, they would receive $2.50 per acre for the lands, covered by the contract. It is the government agents who testify to this effect, and not the Indians, and it is the government agents who inform us of dissatisfaction on the part of

the Indians, because we have not carried out our contract with them.

We have the brutal power to say that we will not pay these Indians anything for their land. But shall we exercise this power? Economy is all right, but economy practiced at the expense of good faith, is not a very desirable policy to pursue [applause], nor are its results to be held as a very precious possession on the part of this great Government. When contracting parties are equal, and keep faith, it is regarded as a matter of credit to the parties. How much more to our credit will it be, to keep faith, when we deal with our helpless, dependent, domestic wards? That is the whole proposition here. We have agreed to give them $2.50, and we have not given it to them, and this bill proposes that we shall now do, what we ought to have done at the last session of Congress.

Mr. MANN. Will the gentleman yield for a question, as affecting the matter of good faith?

Mr. SAUNDERS. Certainly.

Mr. MANN. Did not the gentleman make this statement to the House at the time this bill passed the House before by more than a two-thirds vote?

Mr. SAUNDERS. It did not pass by more than a two-thirds vote according to my recollection.

Mr. MANN. Well, it did, and the gentleman is mistaken about that.

Mr. SAUNDERS. It is not my recollection that it did, but a two-thirds vote does not make right that which is wrong. [Applause.]

Mr. MANN. The House was fully advised at that time.

Mr. SAUNDERS. I do not know how many people were in the House, or whether they were fully advised, or not.

Mr. BURKE of South Dakota. Will the gentleman permit me to state what the vote was? It was 139 ayes, noes 70.

Mr. SAUNDERS. Then, that is not two-thirds.

Mr. MANN. Why, it is two-thirds; and the gentleman is still mistaken.

Mr. SAUNDERS. Twice 9 is 18 and twice 7 is 14 and 1 is 15—

Mr. MANN. Oh, the gentleman is assuming that two-thirds means twice as many.

Mr. SAUNDERS. I do.

Mr. MANN. Then the gentleman has another arithmetical computation coming.

Mr. SAUNDERS. I assume the gentleman meant by his statement that there were twice as many votes for the proposition as against it.

Mr. MANN. What I said was that two-thirds voted for it, did I not?

Mr. SAUNDERS. I do not know what the gentleman had in mind. That is what I had in mind. However, that is irrelevant and immaterial anyway.

Mr. MANN. But the gentleman is as far mistaken now, as he was about the other proposition.

Mr. SAUNDERS. I was trying to find out what the gentleman meant. I am not mistaken in my recollection

of the merits of this proposition, and I will try to inform the House as to them in a moment. It is true that a recommendation to pay $2 per acre came before the House, and from the committee, but it came over the protest of quite a number of the members of that committee. The House committee agreed to put the compensation for these lands at $2 per acre instead of $2.50, as provided for in the Senate. How this got to be $1.25, in the final form, I do not understand. I do not know any more about that than the gentleman knows. The committee understood that it was to be $2, and I was opposed to that reduction of the agreed amount. It was my recollection that the House voted $2 last year, and not $1.25. However that may be, I want to present the merits of the pending proposition. Major McLaughlin was the representative of the Government, in the negotiations with the Indians. He states that the Indians understood that they were to receive $2.50 for their land. The agreement as reproted to us provided for $2.50. The Indians turned over whatever rights they had, in consideration of that undertaking on our part. We can not undertake to say that we were overreached; we can not say we were misled; we can not say that the consideration has failed, because the land is worth far more than the $2.50 per acre, but what difference does it make whether it is worth less, or more? Even if it was worth less, still we agreed to take it on the terms contained in our understanding with the Indians. Shall we exercise our brute force, and override this agreement,

merely because we can do it, and for no better reasons than those so far advanced on the floor of this House?

Sometimes, Mr. Chairman, a man whose note is out of date, but who is amply able to pay every dollar of it, settles his liability at 50 cents on the dollar. That man is not regarded very highly in the world of honorable men, but his attitude is preferable to the course recommended to us. If we undertake to settle at $1.25 an acre, then we are discharging our obligation at 50 cents on the dollar. We will pay $1.25 an acre for land that on an average is worth $5 an acre, and for which we agreed to pay $2.50 per acre. Our ability to pay is infinite, and our contract is still in full force—I was about to say "and virtue," but some gentlemen here do not seem to think that there is much virtue in keeping faith with dependent Indians. But here is the contract and nothing has ever emanated from the Indians to indicate that they have been satisfied with their treatment. They have protested from the beginning.

Mr. DOUGLAS. Will the gentleman yield for an interruption there for him to give me some information?

Mr. SAUNDERS. I will afford the information, if I can.

Mr. DOUGLAS. I was not in the House at the time this bill passed. The gentleman from Illinois has stated, in the presence of the House, that the act contained a number of provisions, some of which were favorable to the Indians and some to the Government, but that the act as a whole was substantially accepted by the Indians by their acting under it.

Mr. SAUNDERS. What else could they do?

Mr. DOUGLAS. But there was an agreement by a commission, or something of that kind. I suggest simply, if that be true, and the Indians have substantially accepted this in view of other benefits contained—

Mr. SAUNDERS. I will answer that in this way: If a party who is able to accept a contract, or to reject it was a whole, accepts it in a modified form, he will be bound by his acceptance. But this is in the case of a free agent. In such a case, when he acts under a contract with modifications, his conduct will be taken as evidence that he has agreed to the modifications, and he will be bound by the contract in its modified form. But this principle does not apply to the case in hand. The Indians could do nothing else but what they did, and they have protested from the very beginning that they were not receiving that which the Government had contracted to give them. Up to the present it has been a matter of $1.25 per acre, or nothing.

The evidence is here in the report before us that the Indians have objected to our breach of faith, and complained that they were not receiving the agreed consideration. All that the Indians were to receive as a consideration for the lands ceded was the price of $2.50 per acre, for a portion of their lands. Talk about the Indians keeping faith with respect to the other matters, wherein have they failed to keep faith? I defy anyone to point out any particular in respect to which they have broken faith.

Mr. KEIFER. I would like to ask a simple question. Would it have been possible for the Indians to have rejected this law?

Mr. SAUNDERS. Not at all. What else could they do, than what they have done? They accepted a situation that they could not amend, correct, or reject. An acceptance of that sort should not cause a man, or a body of men, to lose their contract rights.

Mr. KEIFER. In other words, the United States passed a law, and proceeded to execute it?

Mr. SAUNDERS. Yes, by virtue of brute force. In substance we have said to these Indians by the act of a year ago, something like this: "It is true we have taken your lands and opened your reservation. It is true you have kept the faith on your part. It is true that we agreed to give you $2.50 per acre for your lands, and that these lands are worth about $5 an acre. All of this is true, but we have now determined that we will cancel this agreement, retain your land, and pay you only $1.25 per acre." We proceeded to break faith with the Indians by the exercise of our paramount authority, and it is not much to our credit that we have done so. In conclusion, I repeat what I said in the beginning that the question before us is merely the application of the ordinary principles of honesty, fair dealing, good faith, and integrity, to our dealings with our domestic wards. That is all. [Applause.]

Mr. BURKE of South Dakota. Mr. Chairman, I call for a reading of the bill.

The CHAIRMAN. The Clerk will report the bill.

The Clerk read as follows:

[The text of the bill appears here.]

Mr. MANN. Mr. Chairman, I move to strike out the enacting clause.

The CHAIRMAN. The question is on the motion of the gentleman from Illinois [Mr. Mann].

The question was taken, and the motion was rejected.

Mr. BURKE of South Dakota. Mr. Chairman, I move that the committee do now rise and report the bill to the House with a favorable recommendation.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. PERKINS, chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill, H.R. 12438, and had instructed him to report the same to the House with the recommendation that the bill do pass.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

45 Cong. Rec. 1647 (Senate, February 9, 1910)

CHEYENNE RIVER AND STANDING ROCK LANDS

The bill, (H.R. 12438) to amend sections 7 and 8 of the act of May 29, 1908, entitled "An act to authorize

the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect," was considered as in Committee of the Whole.

The bill was reported from the Committee on Indian Affairs with an amendment, on page 2, line 20, after the word "settlement," to strike out the proviso in the following words:

Provided, That in any event not more than 2 sections shall be granted to the State in any one township, and lands must be selected in lieu of sections 16 or 36, or any part thereof, within the township in which the loss occurs, except in any township where there may not be 2 sections of unallotted lands, in which event whatever is required to make 2 sections may be selected in any adjoining township.

The amendment was agreed to.

Mr. GAMBLE. I propose an amendment to be placed after the word "respectively," in line 18, on page 3.

The VICE-PRESIDENT. The Secretary will read the amendment.

The SECRETARY. On page 3, line 18, after the word "respectively," insert the following additional proviso:

Provided further, That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the said States or otherwise disposed of under the provisions of this act shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. GAMBLE. I call attention to order of business 36 under Rule IX, the bill (S. 3286) to amend sections 7 and 8 of the act of May 29, 1908 (35 Stat. L., p. 460), entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect."

I move the indefinite postponement of the Senate bill for the reason that House bill No. 12438, which has just passed the Senate, covers the identical proposition.

The motion was agreed to.

45 Cong. Rec. 1769-70 (House, February 11, 1910)

CHEYENNE RIVER AND STANDING ROCK INDIAN RESERVATIONS

The Speaker laid before the House the bill (H.R. 12438) to amend sections 7 and 8 of the act of May 29, 1908, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriations and provisions to carry the same into effect," with Senate amendments thereto.

The Senate amendments were read.

Mr. BURKE of South Dakota. Mr. Speaker, I move to concur in the Senate amendments.

Mr. MANN. Mr. Speaker, may I ask the gentleman a question? This amendment is in reference to intoxicating liquors. Will it forbid the introduction of intoxicating liquors into the land after it is opened?

Mr. BURKE of South Dakota. Mr. Speaker, the amendment relating to prohibition of intoxicating liquors in the Indian country will prohibit the sale of liquor or the introduction of liquor into that country for twenty-five years; that is, the land affected by the bill, namely, the portion of the so-called "Standing Rock Indian Reservation," in South Dakota, authorized to be disposed of under the law that this bill proposes to amend.

Mr. STAFFORD. Will the gentleman permit a question?

Mr. BURKE of South Dakota. Yes.

Mr. STAFFORD. Is this amendment of the Senate a new provision in this character of legislation?

Mr. BURKE of South Dakota. Mr. Speaker, I would say in answer to that inquiry that it is not; that this is a provision which has been in a number of bills that have passed the House or become a law recently upon the subject of the disposition of Indian lands.

Mr. STAFFORD. Do I understand the gentleman to hold that in the opening of all Indian reservation lands there has been such a provison restricting the sale of liquor for twenty-five years?

Mr. BURKE of South Dakota. Not in all cases; no, sir.

Mr. STAFFORD. What is the special reason why there should be this limitation in this instance?

Mr. BURKE of South Dakota. I stated that this provision had been in a number of bills that have passed in recent years dealing with the disposition of Indian lands. I have in mind the Yankton Reservation, in South Dakota, which was opened to settlement in 1892 or 1895; and in that legislation there is a provision prohibiting the sale of liquor for all time in the country that was affected by the legislation.

Mr. STAFFORD. May I ask where the lands are, in what States, that will be covered by this limitation?

Mr. BURKE of South Dakota. In South Dakota.

Mr. STAFFORD. In South Dakota there is no constitutional inhibition forbidding the sale of liquor, while in North Dakota there is, and whereas it might be pertinent in the case of the reservation at Yankton, it might not be pertinent in land in South Dakota.

Mr. BURKE of South Dakota. I will say to the gentleman that this provision has been in several bills, I think in one or two in Montana, and if I am not mistaken one in Washington.

Mr. STAFFORD. Is it the purpose of the amendment to seek to determine the internal policy, as far as the prohibition question is concerned, on land that is to be opened up to settlement?

Mr. BURKE of South Dakota. That is the purpose of it.

Mr. STAFFORD. I wish to dissent strongly from such a position. I think the internal policy of the local

government should not be determined by Congress on the liquor question, but it should be reserved for the State; that so far as land open to settlement in a State where they have constitutional prohibition is concerned there might be some reason for the exception and limitation. But in States where they do not have a constitutional prohibition, for us to limit in the grant of settlement for twenty-five years, or for any period of time, that the occupants shall be restricted in the use of intoxicating liquors seems to me to be a departure from the proper province of legislation by Congress.

Mr. BURKE of South Dakota. Mr. Speaker, I desire to make a statement in response to the statement made by the gentleman from Wisconsin. It has always been the policy of the Government to prohibit the introduction of liquor into the Indian country.

In the tract affected by this legislation the Indians have taken allotments, and one-third, perhaps, if not more, of the tract has been allotted to the Indians. The allotments run for twenty-five years, and it is the theory of the committees having jurisdiction of Indian legislation that during the trust period, at least, and while these Indians will be in that country holding allotments, the laws relative to the introduction of liquor into the Indian country shall be extended into that country. That is the purpose of this legislation.

Mr. STAFFORD. May I ask whether, as to all of the Indian reservations open to settlement, there were not allotments made to the Indians?

Mr. BURKE of South Dakota. There were.

Mr. STAFFORD. Are there not many instances where there has been no limitation, so far as the prohibition of the sale of liquor is concerned?

Mr. BURKE of South Dakota. That is absolutely true, and because there was no legislation such as I have named is the principal reason for undertaking to legislate now.

Mr. STAFFORD. I suppose instances might be cited without number of lands in the earlier history of the country that have been opened to settlement and where the Indians have taken allotmentts where the Government has not undertaken to determine the internal policy of the country, but has left it to the State to determine what was the best policy. Take the Yankton Indian Reservation case instanced by the gentleman. A limitation for all time was inserted in the grant when South Dakota had a constitutional prohibition law. Since then the constitution has been amended, so there is today license under local option. Yet in the reservation land that policy of local self-government does not prevail because of the restrictive clause that may have become out of date with present conditions. There is no reason why there should be, in the first instance, a limitation forbidding the sale of liquor. I, for one, believe that we are establishing a bad precedent in this instance in undertaking to determine the policy of a State in advance—to determine for twenty-five years the policy of that State, so that the people of the State can not pass upon the question and adopt that policy best suited to local conditions.

Mr. SABATH. Will the gentleman allow me a question?

Mr. BURKE of South Dakota. Certainly.

Mr. SABATH. Has such limitation been made heretofore on lands open to settlment?

Mr. BURKE of South Dakota. Yes; and I have already so stated.

Mr. SABATH. When?

Mr. BURKE of South Dakota. As early as 1892, I think it was, a bill passed opening that portion of the country in South Dakota then known as the "Yankton Indian Reservation." There was a provision similar to this one and it was for all time.

Mr. SABATH. That was only to the reservation of the land reserved for the Indians.

Mr. BURKE of South Dakota. It was to the country affected by the legislation, the land to be opened for settlement.

Mr. SABATH. All of the land?

Mr. BURKE of South Dakota. All of the land.

Mr. STAFFORD. I think the gentleman from South Dakota must admit that there was some special reason for making such a limitation in that case because South Dakota at that time had a constitutional provision forbidding the sale of liquor in the entire State, and for that reason the policy of the Government was to permit the state policy to control.

Mr. BURKE of South Dakota. This identical provision has been incorporated in several bills that have passed this House disposing of lands belonging to the

Indians and without regard to whether or not the reservation was in a State which had constitutional prohibition or not. And there is pending at the present time an amendment to legislation that was passed in a recent Congress relating to a reservation in the State of Washington, the Yakima Reservation, reported to-day by the Committee on Indian Affairs, to put in that law this very section and brought to the attention of the committee by one of the Senators and one of the Representatives from the State of Washington, they believing that in the interest of the Indians, as well as in the interest of the white population of that State, this provision relating to the introduction and sale of liquor ought to be enacted and made a part of the law authorizing a sale of the surplus lands in that reservation.

Mr. MANN. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. MANN. Did we not put something of the sort in the enabling act for the admission of Oklahoma into the Union, so far as the Indian lands were concerned or the territory embraced in the former Indian lands?

Mr. STEPHENS of Texas. We did.

Mr. BURKE of South Dakota. My understanding is that we did.

Mr. MANN. That was a very formal action even in admitting a State into the Union in limiting its power to prevent the sale of intoxicating liquors.

Mr. STAFFORD. But that part referring to the Indian Territory was mainly occupied by Indians. There

is no one who desires to force liquor upon the Indians, but the internal policy should be determined by the State.

Mr. STEENERSON. This is not a new provision, but a very old one. I understand the committee now provides for doing what we did in the treaty of 1855, under which Minnesota obtained her Indian lands, and the Interior Department is now enforcing the provisions of the treaty of 1855 as to all of northern Minnesota, which has not been Indian lands for over fifty years.

Mr. BURKE of South Dakota. That is true. Mr. Speaker, I call for a vote.

The SPEAKER. The question is on agreeing to the amendments.

The question was taken, and the amendments were agreed to.

BRIEF OF UNITED STATES, AMICUS CURIAE

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 72-1529
Criminal

UNITED STATES OF AMERICA EX REL
TILDEN LOUIS CONDON,

Appellee

vs.

(DON R. ERICKSON, WARDEN OF THE
SOUTH DAKOTA STATE PENITENTIARY,)

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION

The Honorable Fred J. Nichol,
Chief Judge, United States District Court

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PRELIMINARY STATEMENT

In this brief reference to the Appellee, Tilden Louis Condon, will be by use of the word "appellee". Reference to the Appellant, Don R. Erickson, Warden of the South Dakota State Penitentiary, will be by the use of the words "The State of South Dakota". Reference to the Amicus Curiae, the United States of America, will be by the use of the word "government". The Act of May 29, 1908, 35 Stat. 460, "An Act to Open to Settlement Surplus or Unallotted Lands in Cheyenne River and Standing Rock Indian Reservations" will be referred to as "the 1908 Act".

STATEMENT OF FACTS

The Petitioner, Tilden Louis Condon, is an enrolled member of the Cheyenne Indian Tribe. He had been jailed prior to November 2, 1964 for a tribal offense of intoxication. Condon was granted permission to leave tribal jail during the time his sentence was being served for a medical doctors appointment. He did not return to the jail but was later arrested and gave confessions about the rape of a 70 year old woman who was librarian within the town site of Eagle Butte and was the victim in the rape case. He was also identified by her.

The U.S. Attorney commenced proceedings against Condon based upon Federal jurisdiction. This indictment was later dismissed and the State assumed jurisdiction of Condon. Condon pled guilty to the State of South Dakota charge of rape on August 12, 1965. The jurisdictional aspect of this matter was not resolved in the first appeal of Condon to the Circuit Court. See *United States ex rel Condon v. Erickson*, 459 F2d 663 (8th Cir. 1972).

ISSUE

The issue in this case is whether Eagle Butte, situs of the rape, is Indian country under 18 U.S.C. §1151 and whether the

1908 Act opening areas of the Cheyenne River Reservation for homesteading was a diminishment of the reservation.

STATEMENT OF POINTS TO BE ARGUED AND AUTHORITIES RELIED ON

I.

CONGRESS INTENDED TO DIMINISH THE BOUNDARIES OF THE CHEYENNE RIVER INDIAN RESERVATION BY THE ACT OF 1908.

Act of May 29, 1908, 35 Stat. 460

United States v. LaPlant, 200 F. 92 (8th Cir. 1911)

Act of Feb. 2, 1903, 32 Stat. 793

State v. Barnes, 81 S.D. 511, 137 N.W.2d 683 (1965)

Lafferty v. State, 80 S.D. 411, 125 N.W.2d 171 (1963)

State v. Jameson, 77 S.D. 527, 95 N.W.2d 181 (1959)

Swanson v. J. L. Shiely Co., 48 N.W.2d 848 (Minn. 1951)

Putnam v. United States, 248 F.2d 292 (8th Cir. 1957)

United States of America ex rel Tilden Louis Condon v. Don R. Erickson, Warden of the South Dakota State Penitentiary, United States District Court, District of South Dakota, Southern Division, CIV 71-175, Memorandum Decision, June 27, 1972

United States v. Pelican, 232 U.S. 442 (1914)

II.

THE SEYMOUR AND NEW TOWN DECISIONS ARE NOT CONTROLLING IN THIS CASE.

Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 35 (1962)

City of New Town, North Dakota v. United States, 454 F.2d 121 (8th Cir. 1972)

Act of March 22, 1906, 34 Stat. 80

Act of June 1, 1910, 36 Stat. 455

ARGUMENT

I

CONGRESS INTENDED TO DIMINISH THE BOUNDARIES OF THE CHEYENNE RIVER INDIAN RESERVATION BY THE ACT OF 1908.

That Congress intended to diminish the Cheyenne River Indian Reservation is clear from the provisions of the 1908 Act. In Section 2 of the 1908 Act Congress provided:

> That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in section one of this act to relinquish such allotment and to receive in lieu thereof an allotment *anywhere within the respective reservations thus diminished* to which reservation the said Indians may belong . . . (emphasis supplied).

In Section 9 of the 1908 Act Congress provided:

> That Indians residing upon their allotments in townships sixteen north of ranges twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one east shall have the right to use timber in said townships, except on sections sixteen and thirty-six for domestic purposes only as *long as the lands remain part of the public domain.* (emphasis supplied).

The Eighth Circuit Court of Appeals in the case of *United States v. LaPlant*, 200 F. 92 (8th Cir. 1911), directly ruled on the effect of the 1908 Act upon the boundaries of the Cheyenne River Indian Reservation. Referring directly to that particular portion of Sec. 2 of the 1908 Act which is quoted above the Court in *LaPlant* held:

> No other meaning can be given to the words italicized [thus diminished] than that the reservations were diminished, and they were diminished by the Act itself . . . It appears, therefore, that Congress intended to diminish the reservations at the time the act was passed . . . *United States*

v. LaPlant, supra, at p. 94.

In *LaPlant* the Court was dealing with federal criminal jurisdiction over unallotted lands located within the boundaries of the Cheyenne River Indian Reservation as they existed prior to the 1908 Act. The jurisdictional statute conferred jurisdiction on the federal courts in South Dakota over particular offenses committed by any person "within the limits of any Indian Reservation within the state of South Dakota". Act of Feb. 2, 1903, 32 Stat. 793.

A construction of the Act of 1908 similar to that of the Court of Appeals in *LaPlant* has been adopted by the Supreme Court of South Dakota in two cases. *State v. Barnes*, 81 S.D. 511, 137 N.W.2d 683 (1965); *Lafferty v. State*, 80 S.D. 411, 125 N.W.2d 171 (1963). In addition, while construing a similar act of Congress dealing with the Pine Ridge Indian Reservation, the South Dakota Supreme Court in *State v. Jameson*, 77 S.D. 527, 95 N.W.2d 181 (1959) held that the state courts had jurisdiction over lands in the "opened" portion of the Pine Ridge Indian Reservation.

It is submitted that the construction of the Act of 1908 by the Court in *LaPlant* is a reasonable construction which is entitled to great weight in determining the case at hand. In *LaPlant* the Court recognized that "It is important to definitely know over what land the state courts have jurisdiction and over what lands the federal courts have jurisdiction . . . ". *United States v. LaPlant, supra,* at p. 94.

The Supreme Court of Minnesota in the case of *Swanson v. J. L. Shiely Co.*, 48 N.W.2d 848 (Minn. 1951), stated:

> We therefore approach the solution of the questions presented, not as to a case of first impression, but by applying to the problem the interpretation which this Court has previously spelled out . . . To do otherwise now and to

> give a different interpretation to it would be to subject the court to merited criticism that its opinions were good only for the day and case. Our opinions are not only a guide to the lower courts and binding upon them, but the law of this state is what we say it is when the federal courts are called upon to interpret and apply it. Therefore, we should be consistent in our construction of our laws. Our decision should establish stable interpretation, *especially as to legislative intent.* (emphasis supplied) *Swanson v. J. L. Shiely Co.*, 48 N.W. 2d at 852 (Minn. 1951).

In the case of *Putnam v. United States*, 248 F.2d 292 (8th Cir. 1957), the Court stated that:

> The defendants' contentions find some support in *United States v. LaPlant*, D.C.S.D. 1911, 200 F. 92, holding that the Indian title to a portion of an Indian Reservation in South Dakota had been extinguished by being opened to settlement under an Act similar to the Wheeler-Howard Act with which we are concerned. The *LaPlant* case was a criminal case, and the question decided was one of jurisdiction over a murder committed on unallotted land which it was held had been excluded from the limits of the Reservation. The case is distinguishable from, and in any event not controlling in, the instant case. We think that the *LaPlant* case, in so far as it is of any aid or comfort to the defendants, has been overruled by *United States v. Pelican, supra*, 232 U.S. 442, 447, 34 S.Ct. 396, 58 L.Ed. 676. *Putnam v. United States, supra*, at 295.

A careful reading of the *Putnam*, *Pelican* and *LaPlant* decisions reveals that the validity of the *LaPlant* decision was questioned in *Putnam* only in so far as it could potentially be construed as holding that Indian title to allotted lands in the "opened portion" of the Cheyenne Indian Reservation was extinguished by the Act of 1908. A review of the *LaPlant* decision in connection with the Act of 1908 gives little credence to such a construction. It is important in this connection to emphasize that in *LaPlant* the Court was dealing with a criminal statute establishing federal jurisdiction "within the limits of any Indian Reservation within the state of South

Dakota". Act of Feb. 2, 1903, 32 Stat. 793. The *LaPlant* court stated that:

> The question, therefore, is whether or not on the 20th day of March, 1911, when this offense was committed, the place where it was committed was within an Indian Reservation. *United States v. LaPlant, supra,* at 93.

The question of the status of allotted lands was not dealt with.

The construction of the Act of 1908 by the court in *LaPlant* has been followed by the State of South Dakota and the Government for a period of about 71 years. The sweeping effects of a contrary holding at this time upon the administration of justice within the state and federal levels in South Dakota is apparent and is magnified by the existence of similar statutes with reference to other Indian Reservations in South Dakota. It is submitted that the *LaPlant* construction of Congressional intent with reference to the Act of 1908 is a proper construction and should be upheld by this court. As illustrated in the Memorandum Decision of Judge Nichol such a construction finds support in the "subsequent congressional treatment of the reservation". *United States of America ex rel Tilden Louis Condon v. Don R. Erickson, Warden of the South Dakota State Penitentiary,* United States District Court, District of South Dakota, Southern Division, CIV 71-175, Memorandum Decision, June 27, 1972 at page 4-5.

II.

THE SEYMOUR AND NEW TOWN DECISIONS ARE NOT CONTROLLING IN THIS CASE.

That the cases of *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351 (1962) and *The City of New Town, North Dakota v. United States*, 454 F.2d 121 (8th Cir. 1972) are not controlling is apparent from a comparison of the

Act of 1908 with the Act of 1906, 34 Stat. 80 and the Act of June 1, 1910, 36 Stat. 455 all of which are set forth in the appendix to the government's brief.

In *Seymour* the Court stated that:

> Nowhere in the 1906 Act is there to be found any language similar to that in the 1892 Act expressly vacating the South Half of the reservation and restoring that land to the public domain. Quite the contrary, the 1906 Act repeatedly refers to the Colville Reservation in a manner that makes it clear that the intention of Congress was that the reservation should continue to exist as such. *Seymour v. Superintendent, supra*, at p. 355.

In *New Town* the Court of Appeals held that, "The 1910 Act clearly by its own terms does not purport to alter the reservation boundaries." *City of New Town v. United States, supra*, at p. 125.

Such is not the case with the Act of 1908. As pointed out above the Act of 1908 expressly refers to the reservation "thus diminished" and to the lands as part of the "public domain" and is consistent throughout its terms with a Congressional intent to diminish the boundaries of the Cheyenne River Indian Reservation.

CONCLUSION

It is the position of the Federal Government that this factual situation, unlike *Seymour*, does not result in a jurisdictional dispute which might hamstring or hamper law enforcement. The history of city and state law enforcement in Eagle Butte has been based on the earlier decisions. To now add this area to Federal jurisdiction would not, in our opinion, be a proper move in view of the reasoning or an extension of the former reasoning of State and Federal courts which was based on the cases that are now sought to be distinguished by

opposing counsel. It seems to us it is unnecessary that there be a physical redrawing of the boundaries as this has been done by implication in the former decisions. Thus, it is our opinion that there was and remains state jurisdiction in the area diminished on the Cheyenne Indian Reservation. We have seen nothing persuasive that would lead us to believe that the state's jurisdiction should not remain and we further request that as the court takes its careful, reasoned consideration of this case, it bear in mind that there are other reservations, the Sisseton-Wahpeton as an example, where the court's decision, if not controlling as to those reservations, may create an opportunity for further litigation and questions. We hope this court will recognize those possible problems and consider them even though not directly before the court in this case.

Respectfully submitted,

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November, 1972

APPENDIX "A"

Act of March 22, 1906, 34 Stat. 80

–An Act To authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the diminished Colville Indian Reservation, in the State of Washington.

Sec. 2. That as soon as the lands embraced within the diminished Colville Indian Reservation shall have been surveyed, the Secretary of the Interior shall cause allotments of the same to be made to all persons belonging to or having tribal relations on said Colville Indian Reservation, to each man, woman, and child eighty acres, and, upon the approval of such allotments by the Secretary of the Interior, he shall cause patents to issue therefor under the provisions of the general allotment law of the United States.

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands–that is, lands not allotted or reserved for Indian school, agency, or other purposes–of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States and, upon completion of the classification and appraisement, such surplus lands shall be open to settlement and entry under the provisions

of the homestead laws at not less than their appraised value in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof: *Provided*, That the price of said lands when entered shall be fixed by the appraisement, as herein provided for, which shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry, and in case any entryman fails to make the annual payments, or any of them, promptly when due all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry: *Provided further*, That the lands remaining undisposed of at the expiration of five years from the opening of the said lands to entry shall be sold to the highest bidder for cash, at not less than one dollar per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold ten years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price.

Sec. 4. That the said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation: *Provided*, That the

rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Sec. 5. That all of said lands returned and classified as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, and under such rules and regulations as he may prescribe.

Sec. 6. That the proceeds not including fees and commissions arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral and town-site lands shall be, after deducting the expenses incurred from time to time in connection with the allotment, appraisment, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians belonging and having tribal rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit, under the direction of the Secretary of the Interior, in the education and improvement of said Indians, and in the purchase of stock cattle, horse teams, harness, wagons, mowing machines, horserakes, thrashing machines, and other agricultural implements for issue to said Indians, and also for the purchase of material for the construction of houses or other necessary buildings, and a reasonable sum may also be expended by the Secretary, in his discretion, for the comfort, benefit, and improvement of said Indians: *Provided*, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if, in the opinion of the Secretary of the Interior, such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise.

Sec. 7. That any of said lands necessary for agency, school, and religious purposes, and any lands now occupied by the agency buildings, and the site of any sawmill, gristmill, or other mill property on said lands are hereby reserved from the operations of this Act: *Provided*, That all such reserved lands shall not exceed in the aggregate three sections and must be selected in legal subdivisions conformable to the public surveys, such selection to be made by the Indian agent of the Colville Agency, under the direction of the Secretary of the Interior and subject to his approval.

Sec. 8. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

Sec. 9. That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceeds derived from the sales as herein provided.

Sec. 10. That to enable the Secretary of the Interior to survey, allot, classify, appraise, and conduct the sale and entry of said lands as in this Act provided the sum of seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, from any money in the Treasury not otherwise appropriated, the same to be reimbursed from the proceeds of the sales of the aforesaid lands: *Provided*, That when funds shall have been procured from the first sales of the land the Secretary of the Interior may use such portion thereof as may be actually necessary in conducting future sales and

otherwise carrying out the provisions of this Act.

Sec. 11. That nothing contained in this Act shall prohibit the Secretary of the Interior from reserving from said lands, whether surveyed or unsurveyed, such tracts for town-site purposes, as in his opinion may be be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians, as provided in section six of this Act.

Sec. 12 That if any of the lands of said diminished Colville Indian Reservation can be included in any feasible irrigation project under the reclamation Act of June seventeenth, nineteen hundred and two, the Secretary of the Interior is authorized to withhold said lands from disposition under this Act and to dispose of them under the said relamation Act, and the charges provided for by said reclamation Act shall be in addition to the appraised value of said lands fixed as hereinbefore provided and shall be paid in annual installments as required under the said reclamation Act, and the amounts to be paid for the land, according to appraisement, shall be credited to the fund herein established for the benefit of the Colville Indians."

Approved, March 22, 1906.

APPENDIX "B"

Act of May 29, 1908, 35 Stat. 460

ACT TO OPEN TO SETTLEMENT SURPLUS OR UNALLOTTED LANDS IN CHEYENNE RIVER AND STANDING ROCK INDIAN RESERVATIONS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota lying and being within the following described boundaries, to-wit: Beginning at a point on the one hundred and second meridian of longitude west, where the township line between townships nine and ten north intersects the same; thence east on said township line to a point where the same intersects the range line between ranges twenty-four and twenty-five east of the Black Hills meridian; thence north on said range line to a point where the same intersects the township line between townships fifteen and sixteen north; thence east along said township line to a point in the center of the main channel of the Missouri River; thence in a northerly direction along the center of the main channel of said Missouri River to a point where the township line between townships eighteen and nineteen north intersects the same, and including also entirely all islands, if any, in said river; thence west on said township line to a point where the range line between ranges twenty-two and twenty-three east intersects the same; thence north along said range line to the northwest corner of section nineteen in township twenty-one north of range twenty-three east; thence east on the section line north of sections nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four to a point where the same intersects the range line between ranges

twenty-three and twenty-four east; thence north along said range line to the State line between the States of South Dakota and North Dakota; thence west on said State line to a point where the range line between ranges eighty-four and eighty-five west in North Dakota intersects the same; thence north on said range line to a point where said range line intersects the center of the main channel of the South Fork of the Cannon Ball River; thence in a westerly direction up and along the center of the main channel of the said river to a point where the same intersects the one hundred and second meridian of longitude west; thence south along said one hundred and second meridian of longitude west to the place of beginning, except such portions thereof as have been allotted to Indians: Provided, That sections sixteen and thirty-six of the lands in each township therein shall not be disposed of, but shall be reserved for the use of the common schools of the States of South Dakota and North Dakota, as the same may be located in the said States, respectively: Provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: Provided, however, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other proper authority of any religious organization heretofore engaged in mission or school work on said reservations, for such lands thereon (not included in any town site herein provided for) as have been heretofore set apart to such organization for mission or school purposes.

Sec. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled

upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in section one of this act to relinquish such allotment and to receive in lieu thereof an allotment anywhere within the respective reservations thus diminished to which reservation the said Indians may belong: Provided further, That prior to the said proclamation the Secretary of the Interior shall cause allotments to be made to every man, woman, and child belonging to or holding tribal relations in said Cheyenne River and Standing Rock Reservations who have not heretofore received the allotments to which they are entitled under provisions of existing laws: Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress: Provided further, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars or Phillipine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged.

Sec. 3. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisement as herein provided. The President of the United States shall appoint two commissions, one for each reservation, each commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted in

severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six in each of said townships, each commission to be constituted as follows: One resident citizen of the States of North and South Dakota, one representative of the Indian Bureau and one person holding tribal relations with one of said tribes of Indians. That within twenty days after their appointment the said commissioners so appointed for each of the said reservations, respectively, shall meet and organize by the election of one of their number as chairman. Each commission is hereby empowered to select such clerks and assistants at such compensation as the Secretary of the Interior may approve. That said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining lands embraced within each reservation as described in section one of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection and classification of said lands and necessary expenses to be approved by the Secretary of the Interior; such inspection and classification to be completed within six months from the date of the organization of said commissions respectively, and no compensation shall be paid to either the commissioners or employees after the said six months. That when said commissions shall have completed the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

Sec. 4. That the price of said lands shall be paid in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One

fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the appraised price thereof: And provided, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: And provided further, That all lands remaining undisposed of at the expriation of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this act. And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this act, under such rules and regulations as the Secretary of the Interior may prescribe.

Sec. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and

disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the reservations aforesaid in the States of South Dakota and North Dakota the sums to which the respective tribes may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians respectively shall be expended for their benefit under the direction of the Secretary of the Interior.

Sec. 7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at one dollar and twenty-five cents per acre, and the same are hereby granted to the States of South Dakota and North Dakota for such purpose as the same are located in the said States respectively; and in case any of said sections, or parts thereof, are lost to said States by reason of allotments thereof to any Indian or Indians, or otherwise, the governors of said States, respectively, with the approval of the Secretary of the Interior, are hereby authorized, within the area of the respective States described in section one of this act, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of

not more than two hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the States of South Dakota and North Dakota, as provided in section seven of this act. And there is hereby appropriated the further sum of seventy-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification and allotments provided for herein; Provided, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribes respectively.

Sec. 9. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: Provided, That nothing in this act shall be construed to deprive the said Indians of the Cheyenne River and Standing Rock Indian Reservations, in South Dakota and North Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act: Provided, That Indians residing upon their allotments in townships sixteen north of ranges twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one east shall have the right to use timber in said townships, except on sections sixteen and thirty-six for domestic purposes only as long as the lands remain part of the public domain.

Approved, May 29, 1908.

APPENDIX "C"

Act of June 1, 1910, 36 Stat. 455

—An Act To authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause the unsurveyed part of the Fort Berthold Indian Reservation, in the State of North Dakota, to be surveyed, and to sell and dispose of, as hereinafter provided, all the surplus unallotted and unreserved lands within that portion of said reservation lying and being east and north of the Missouri River, and he shall cause an examination to be made of said lands by the Geological Survey; and if there be found any lands bearing coal or other mineral, the Secretary of the Interior is hereby authorized to reserve them from allotment or other disposition until Congress shall provide for their disposal: *Provided,* That any Indians to whom allotments may have been made within the area described herein may, in case they elect to do so before said lands are offered for sale, relinquish the same and select allotments in lieu thereof within the area in which the additional allotments hereinafter provided for are to be made.

Sec. 2. That the Secretary of the Interior be, and he is hereby, authorized to cause an allotment of one hundred and sixty acres of agricultural land or three hundred and twenty acres of grazing land to be made from the lands of the Fort Berthold Indian Reservation to each member of the several tribes belonging to and occupying said reservation now living,

such allotment to be in addition to any allotments heretofore made or which may be made under existing law: *Provided*, That all allotments made under this Act shall be made on that part of the reservation lying west and south of the Missouri River, or in townships one hundred and fifty north, of ranges ninety, ninety-one, ninety-two, and ninety-three west; townships one hundred and forty-nine north, of ranges ninety and ninety-one west; townships one hundred and forty-eight north, of ranges eighty-eight, eighty-nine, ninety, and ninety-one west; and townships one hundred and forty-seven north, of ranges eight-seven, eighty-eight, eighty-nine, and ninety west, lying east and north of the Missouri River: *Provided further*, That all allotments of land in the townships specifically described and lying north and east of the Missouri River shall be made prior to a date to be fixed by the Secretary of the Interior, which date shall be not less than six months from and after the date of approval of this Act.

Sec. 3. That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions shall be maintained thereon for the benefit of said Indians; and he is hereby authorized to set aside and reserve such tracts in sections thirty and thirty-one, in township one hundred and forty-seven north, range eighty-seven west, and section thirty-six, in township one hundred and forty-seven north, range eighty-eight west of the fifth principal meridian as he may deem necessary to preserve the ruins of the old Fort Berthold Indian village and the Indian burial grounds adjacent thereto.

Sec. 4. That the Secretary of the Interior is hereby authorized to set aside and reserve such tracts as may be deemed necessary, not to exceed six hundred and forty acres in the aggregate, for the purpose of establishing and maintaining a farm for the benefit of the members of the several tribes of

Indians on the Fort Berthold Indian Reservation; and there is hereby appropriated out of any money in the Treasury to the credit of the said Fort Berthold Indians, or which shall be placed to their credit from the proceeds of the sale of the lands disposed of as provided herein, not otherwise appropriated, the sum of twenty-five thousand dollars, or so much thereof as may be necessary to pay for the construction of the necessary buildings on said lands and for the purchase of necessary live stock, machinery, and equipment, and also to defray the expenses of operating said farm. The management and control of said farm shall be under the supervision of the Commissioner of Indian Affairs

Sec. 5. That the Secretary of the Interior is hereby authorized to set aside and reserve from location, entry, sale, allotment, or other appropriation such tracts as are found to be chiefly valuable for power sites or reservoir sites: *Provided*, That the Secretary of the Interior is hereby authorized to cancel, after notice and a hearing, all trust patents issued to Indian allottees for allotments within any such power or reservoir site: *Provided further*, That the Secretary of the Interior shall report to Congress all lands so withdrawn for power or reservoir sites.

Sec. 6. That before any of the land is disposed of, as hereinafter provided, and before the State of North Dakota shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections sixteen and thirty-six, or any portions thereof, by reason of allotment thereof to any Indian or Indians, the Secretary of the Interior is authorized to set aside and reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe; and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than ten acres in any town site; and patents shall be issued for the lands so set apart and reserved for school, park,

and other public purposes, to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct; and he shall cause not more than twenty per centum of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of schoolhouses or other public buildings or improvements in the town sites in which such lots are located. The net proceeds derived from the sale of such lots, less the amounts expended in the construction of schoolhouses or other public buildings or improvements, as hereinbefore provided, within the town sites aforesaid, shall be credited to the Indians as hereinafter provided.

Sec. 7. That the President of the United States shall appoint a commission, consisting of three persons, to inspect, classify, appraise, and value all of the lands described in section one of this Act that shall not have been allotted in severalty to said Indians or granted or reserved by the terms of this Act, said commission to be constituted as follows: One of the commissioners shall be a person holding tribal relations with said Indians, one a representative of the Interior Department, and one a resident citizen of the State of North Dakota. That within twenty days after their appointment said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect and classify and appraise, in one hundred and sixty acre tracts, all of the remaining lands described in section one of this Act, except sections sixteen and sections thirty-six. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised. That said commissioners shall be paid a salary of not to exceed

ten dollars per day each while actually employed in the inspection and classification of said lands and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior; such inspection and classification to be completed within six months from the date of the organization of said commission.

Sec. 8. That when said commissioners shall have completed the classification and appraisement of all of said lands, and the same shall have been approved by the Secretary of the Interior, the lands shall be disposed of under the provisions of the homestead, mineral, and town-site laws of the United States, except as hereinafter otherwise provided and excepting sections sixteen and thirty-six of each township, which sections are hereby granted to the State of North Dakota for school purposes; and in case either of said sections or parts thereof should be lost to the State by reason of the allotment thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this Act, to select other unoccupied, unreserved, nonmineral lands, which selections must be made at least thirty days prior to the date fixed by the President's proclamation opening the surplus lands to settlement: *Provided*, That in any event not more than two sections shall be granted to the State in any one township, and lands must be selected in lieu of sections sixteen and thirty-six, or any part thereof, within the township in which the loss occurs, except in any township where there may not be two sections of unallotted lands, in which event whatever is required to make two sections may be selected in any adjoining township: *Provided further*, That the United States shall pay to the said Indians for the lands in said sections sixteen and thirty-six, so granted, or the lands within said reservation selected in lieu thereof, the sum of two dollars and fifty cents per acre.

Sec. 9. That said lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United States and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in said proclamation: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars and Philippine insurrection, as defined and prescribed in sections twetny-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and on shall not be abridged: *Provided further*, That the price of sa agricultural lands shall be the appraised value thereof as approved by the Secretary of the Interior, and the agricultural lands shall be disposed of under the homestead law and shall be paid for in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal installments, to be paid in two, three, four, five, and six years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be again subject to entry under the provisions of the homestead law at the appraised price thereof: *Provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the appraised price, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and

commissions at the time of commutation or final entry as now provided by law where the price of land is one dollar and twenty- five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act.

Sec. 10. That the Secretary of the Interior is hereby authorized to set aside and reserve as a tribal forest reserve all timber lands, to be used by said Indians under the direction of the Commissioner of Indian affairs.

Sec. 11. That the net proceeds derived from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States to the credit of the Indians belonging to and having tribal rights on said reservation, which shall draw interest at the rate of three per centum per annum; that all the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be subject to appropriation by Congress for their education, support, and civilization.

Sec. 12. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one-hundred thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of North Dakota, and there is hereby appropriated the further sum of one hundred thousand dollars, or so much thereof as may be necessary, for the purpose of making surveys, appraisements, allotments, and classification provided for herein: *Provided*, That the latter appropriation, or any further appropriations hereafter made for the purpose of carrying out the provisions of

APPENDIX "D"

this Act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribes.

Sec. 13. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, granted to the State, or otherwise disposed of shall be subject to all laws of the United States prohibiting the introduction of intoxicants into the Indian country until Congress shall otherwise provide.

Sec. 14. That nothing in this Act contained shall in any manner bind the United States to purchase any of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, or to dispose of said lands except as provided herein, or to guarantee to fine purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this Act shall be construed to deprive said Indians of Fort Berthold Indian Reservation of any benefits to which they are entitled under existing treaties or agreement not inconsistent with the provisions of this Act.

Approved, June 1, 1910.